

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

1942

No. 1086

59

CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE
OF THE UNITED STATES, ET AL., APPELLANTS

vs.

ROSCOE C. FILBURN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF OHIO

FILED MARCH 27, 1942



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1080

CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE
OF THE UNITED STATES, ET AL., APPELLANTS,

vs.

ROSCOE C. FILBURN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF OHIO

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1 In the District Court of the United States for the Western
Division, Southern District of Ohio

(At Dayton)

Civil No. 118

ROSCOE C. FILBURN, R. R. #10, DAYTON, OHIO, PLAINTIFF

VS.

CARL R. HELKE, R. R. #1, VANDALIA, OHIO, ROY M. BAKER, R. R.
#1, SPRING VALLEY, OHIO, AND HOMER W. FLINSBACH, R. R.
#1, GERMANTOWN, OHIO, INDIVIDUALLY AND AS MEMBERS OF
THE COUNTY COMMITTEE IN AND FOR MONTGOMERY COUNTY,
OHIO, UNDER THE AGRICULTURAL ADJUSTMENT ACT OF 1938, AS
AMENDED; DALE WILLIAMS, HOLLANSBURG, DARKE COUNTY,
OHIO, INDIVIDUALLY AND AS STATE CHAIRMAN FOR THE STATE OF
OHIO UNDER THE AGRICULTURAL ADJUSTMENT ACT OF 1938, AS
AMENDED AND CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE
OF THE UNITED STATES OF AMERICA, 2101 NEW HAMPSHIRE AVE.,
WASHINGTON, D. C., DEFENDANTS

Complaint

Filed July 14, 1941

FIRST CAUSE OF ACTION

Comes now Roscoe C. Filburn, plaintiff, and for his first cause
of action against the above named defendants, complains, alleges,
and states:

2 1. That said plaintiff is a resident and citizen of Mont-
gomery County, in the Western Division of the Southern
District of the State of Ohio, and is now and was at all times
hereinafter mentioned, a farmer engaged in producing and rais-
ing wheat on real estate owned by said plaintiff, in Montgomery
County, Ohio.

2. That Carl R. Helke, Roy M. Baker, and Homer W. Flins-
bach are also citizens and residents of Montgomery County, in
the Western Division, Southern District of the State of Ohio, and
are now, and have been at all times hereinafter referred to, the
duly selected and acting members of the County Committee under
the Agricultural Adjustment Act of 1938, (Public No. 430—73th
Congress), as amended by S. J. Res. 60, Public No. 74—77th

Congress. That said defendants will be hereinafter referred to as County Committee.

3. The defendant, Dale Williams, is State Chairman for the State of Ohio, under the Agricultural Adjustment Act of 1938, (Public No. 430—75th Congress), as amended by S. J. Res. 60, Public No. 74—77th Congress. Said defendant will be hereinafter referred to as Chairman of the State Committee.

4. That the defendant, Claude R. Wickard, is a citizen and resident of the State of Indiana, with his official office at Washington, D. C., and is now the duly appointed, qualified, and acting Secretary of Agriculture of the United States of America.

5. That this is a civil action arising under the Constitution and Laws of the United States, as hereinafter more specifically set forth, and is a suit and proceeding arising under the laws of the United States regulating interstate commerce as hereinafter more particularly alleged.

6. That said plaintiff is now and has, for many years past, been engaged in raising wheat in Montgomery County, Ohio, and in marketing the same as a means of livelihood. Plaintiff further says that all of the wheat grown and harvested by plaintiff and all other Ohio wheat growers is winter wheat which matures, is harvested and ready for the market usually by July 1st to the 15th of each year.

7. Plaintiff further alleges that under date of February 16, 1938, the President of the United States approved a law enacted by Congress (H. R. 8503, Public No. 430, 75th Congress), known as the "Agricultural Adjustment Act of 1938." That in said Act it was provided that if the total supply of wheat as of the beginning of any marketing year exceeded a normal year's domestic consumption and exports by more than 35 per centum, the Secretary of Agriculture, shall, not later than May 15th, proclaim such fact during the marketing year, beginning July 1st, and a national marketing quota shall be in effect with respect to the marketing of wheat, and that prior to June 10th said Secretary shall conduct a referendum, by secret ballot, of wheat farmers who will be subject to such quota to determine whether said farmers favor or oppose said quota, and that if more than one-third of the farmers voting in said referendum oppose said quota, the Secretary shall, prior to the effective date of such quota, by proclamation suspend the operation thereof with respect to wheat. It was therein further provided that any farmer who, while marketing quotas were in effect, marketed wheat in excess of the farm marketing quotas for the farm on which such wheat was produced, should be subject to a penalty of 15 cents per bushel on the excess so marketed, and the marketing of wheat was defined in said Act

as the sale, barter, or exchange thereof. That on the 26th day of May 1941, the President of the United States approved a joint resolution enacted by Congress (S. J. Res. 60, Public No. 74—77th Congress), amending said Agricultural Adjustment Act of 1938, among other things, by providing that the rate of penalty on wheat in excess of said farm marketing quotas shall be

4 50 per centum of the basic rate of the loan on the commodity for cooperators for such marketing year under section 302 of the aforesaid Act of 1938, and of said Resolution.

8. That no referendum was conducted by said Secretary of the wheat farmers of the United States for the years 1938, 1939, and 1940, and therefore no national marketing quotas, with respect to wheat, were put into effect in any of said years. That on or about the 31st day of May 1941, there was conducted a purported referendum of the wheat farmers subject to the Agricultural Adjustment Act of 1938, as amended, and thereafter, the date being unknown to plaintiff, said Secretary declared that more than two-thirds of the farmers voting in said referendum had voted in favor of marketing quotas with respect to wheat.

9. That during the crop year of 1940-1941, said plaintiff planted; produced and is in process of harvesting wheat grown on approximately twenty-three acres of land; that on or about the 12th day of July 1941, said plaintiff was notified by said Committee that his 1940-1941 wheat allotment acreage was 11.1 acres; that his excess wheat acreage for said crop year was a total of approximately 11.9 acres; that his normal wheat yield per acre on 11.9 acres of said excessive wheat acreage was 20.1 bushels per acre, or a total of 239 bushels of excess wheat raised by plaintiff. Plaintiff further alleges that for said crop year he produced approximately 462 bushels of wheat on 23 acres, as claimed by said County Committee, but plaintiff specifically denies that any of such wheat by him owned, produced, and raised, constituted excess wheat acreage for said crop year, or was in excess of any effective marketing quota for said year, or was subject to the payment of any penalty. That plaintiff was further notified at said time, by said County Committee, that the afore-

5 said 239 bushels of wheat, owned, produced, and harvested by said plaintiff, was subject to a penalty of 49 cents per bushel thereon, to be paid the said County Committee before any of the wheat owned, produced, and harvested by said plaintiff for said crop year could be, by him, sold.

10. That said County Committee, purporting to act under said Agricultural Adjustment Act of 1938, as amended, refuses to issue to plaintiff a marketing card permitting him to market any of his wheat, until the aforesaid penalty of 49 cents per

bushel on the excess wheat is by plaintiff paid. That said County Committee claims to have a lien on all of plaintiff's wheat for the amount of said penalty, and that said County Committee refuses to permit plaintiff to market, store, feed, plant, or in any manner dispose of said wheat until said penalty is paid. Plaintiff further says that by reason of said Act, as amended, and the construction and interpretation placed thereon by said County Committee, no grain dealer will purchase said wheat from plaintiff until he secures such a marketing card for all of his wheat from said County Committee.

11. Said plaintiff further avers and states that, although no purported referendum, by said Secretary, was conducted prior to May 31, 1941, said County Committee and said Secretary have attempted to establish marketing quotas on the wheat of said plaintiff and other farmers similarly situated for the wheat crop planted in 1940 and harvested in 1941, practically all of said crop having been ready to be harvested at the time said referendum was held. Plaintiff further avers that said Secretary was wholly without authority of law, under said Act as amended, to conduct a referendum on May 31, 1941, after said wheat crop had been planted, with no marketing quotas in effect, and was practically ready for harvesting at the time of said referendum, and that

6 the acts of the said County Committee in refusing and denying plaintiff the right to market, or otherwise dispose of his said wheat crop, without paying a penalty of 49 cents per bushel on wheat grown on the purported excess acreage, and asserting a pretended lien on all of said crop for said penalty, will have the effect of confiscating plaintiff's property without due compensation and without due process of law.

12. Plaintiff further alleges that he is not obligated to pay the aforesaid penalty, for the reason that plaintiff believes that said County Committee is acting illegally and without warrant or authority of law, and that the action of said Secretary and of said County Committee in claiming that marketing quotas are in effect as to plaintiff's wheat for the crop year 1940-1941 is null, void and unenforceable, contrary to the provisions of the Constitution and laws of the United States for the following reasons:

(a) That said Act, as amended, is not a revenue measure, and was not enacted for the purpose of raising revenue, and that the so-called penalty of said Act is therefore beyond the power of Congress to impose.

(b) That said Act, as amended, is in fact an effort on the part of Congress to regulate, restrict and control the production of a basic agricultural commodity in the various states beyond the power of and not delegated to the Congress by the Constitution of the United States of America.

(c) That said Act, as amended, is not one regulating commerce with foreign nations, or among the several states, for the reason that the growing of wheat and the production of other agricultural products does not constitute interstate commerce, nor does it effect interstate commerce to the extent necessary to give Congress authority to regulate same, and is, therefore, beyond the power of Congress to regulate the production of same.

7 (d) That said Act, as amended, purports to delegate powers legislative in character to an administrative branch of the government, the Secretary of Agriculture, and his assistants and those acting under him and to farmers, in violation of the Constitution of the United States.

(e) That said Act, as amended, purports to delegate power judicial in character to an administrative branch of the Government, the Secretary of Agriculture, his agents, and assistants, in violation of the Constitution of the United States.

(f) That said Act, as amended, violates the Tenth Amendment to the Constitution of the United States, in that powers not delegated to the United States by the Constitution, or prohibited by it to the States, are reserved to the states or to the people, and that said Act, as amended, is an effort on the part of the Congress to exercise a power not delegated to the United States by the Constitution, but reserved to the people of the States, same being the power to regulate, restrict, or otherwise control the production of agricultural commodities.

(g) That the amendment to said Act, assuming to impose a penalty for something which when done was lawful, namely, the planting, growing and harvesting of wheat in excess of alleged marketing quotas, having provided for the forfeiture of property, is unconstitutional and void under Section 9, Article 1 of the Constitution as an ex post facto law. That the construction placed on said Act, as amended, by said Secretary and said County Committee, has the effect of a forfeiture of plaintiff's property as a penalty for an act admittedly lawful and proper when done.

(h) That said Act, as amended, is an attempt on the part of Congress to regulate and fix the price of basic agricultural commodities, without regard to whether such sales are made for interstate or intrastate commerce.

8 (i) That the amount of said penalty claimed on said wheat purported to have been planted and harvested in excess of marketing quotas, to wit, 49 cents per bushel, is exorbitant, confiscatory, and destructive to the occupation and property of plaintiff, is further illegal and void because said amendment prescribes penalties for violation so drastic and severe as to deny persons coming thereunder, including this plain-

tiff, due process of law, and the equal protection of the law, and amounts to the taking of plaintiff's property without due process of law in violation of the Constitution of the United States.

(j) That said penalty, under said amendment, is discriminatory in its nature and application, because said Act illegally applies to a particular part of the people of the United States for the special benefit of certain groups of people residing in the United States and elsewhere, in the uncontrolled judgment of said Secretary, and is therefore unreasonable and improper class legislation, discriminatory, and in violation of the Constitution of the United States.

(k) That said Act, as amended, purports to lay a tax or duty on articles exported from a state, since said plaintiff and others similarly situated cannot market any of their wheat without paying the aforesaid penalty, contrary to Section 9, Article 1 of the Constitution.

(l) That said Act, as amended, is an unjustifiable, improper, and illegal interference with rights of plaintiff in and to his property, and deprives plaintiff of his liberty and property without due process of law in violation of the Fifth Amendment to the Constitution, and deprives plaintiff of his natural and inherent rights in violation of the Tenth Amendment to the Constitution which reserves to the people and the states all powers not delegated to Congress.

9 (m) That said Act, as amended, grants arbitrary power to the Secretary of Agriculture to nullify marketing quotas, and that the action of said Secretary and said County Committee in attempting to enforce said penalty for wheat grown in 1940-1941 constitutes an unwarranted extension of the powers of an administrative branch of the government in contravention of our republican form of government.

(n) That said Act, as amended, is further void in that said Secretary has unlimited power to dispose of said penalties when collected, without any lawful appropriation or specific designation by Congress, in violation of Section 9, Article 1 of said Constitution.

(o) That said Act, as amended, authorized the taking of private property for public use without just compensation, contrary to the Fifth Amendment of the Constitution.

(p) That said Act, as amended, has the effect of extinguishing the property rights of plaintiff, and others similarly situated, without legal process, contrary to the Fifth Amendment to said Constitution.

(q) That said Act, as amended, is an unauthorized and illegal attempt on the part of Congress to inflict penalties without

affording an opportunity to be heard in a judicial or other tribunal.

(r) That said Act, as amended, provides a penalty so excessive and unreasonable for the violation of alleged marketing quotas as to intimidate and coerce plaintiff and others similarly situated, and to deter them from contesting the validity of said acts in the courts, and therefore is a denial of the equal protection of the laws as provided in the Constitution.

(s) That said Act, as amended, is further void in that it violates Section 4 of Article I of the Constitution, in that Congress is without power to delegate to any group of
10 people, or to any official, or branch of the Federal Government, the authority to hold elections or to conduct a referendum.

13. Plaintiff further alleges that the purported referendum of wheat farmers held on May 31, 1941, is invalid, illegal, and of no force and effect for the following reasons, to wit: That said election was conducted by agents and employees of the Department of Agriculture, who were interested in the result of said referendum, and not by disinterested election officials, nor was any representation given the farmers affected by the election to supervise the voting and counting of the ballots. That an active campaign among said farmers, both orally and in writing, was conducted by the Secretary, Agents, and Employees of the Agricultural Department preceding said election, and that said farmers did not have the opportunity to exercise their free and voluntary judgment in casting their ballots at said election, but that they were influenced and intimidated by the Secretary, agents, employees, and representatives of the Department of Agriculture.

14. That said Secretary and said Agricultural Committee are attempting to construe said Act, as amended, retroactively and not prospectively by holding that the mere planting of wheat constitutes an unlawful act, whereas, said Act, as amended, even under a legal and proper referendum held on May 31, 1941, could not have been effective as to plaintiff's crop planted in the fall of 1940 and harvested at or near the time the said referendum was purportedly conducted and said marketing quotas adopted, as aforesaid.

15. That at the time plaintiff planted his wheat there was in effect under Section 339 of said Act, a provision for a penalty of 15 cents per bushel for wheat in excess of farm marketing quotas, if and when such marketing quotas should be made effective by proclamation of said Secretary and the referendum of the wheat farmers of the nation. That the wheat

11 farmers of the nation, including this plaintiff, because of the uncertain world situation were encouraged by the Secretary and his predecessor in office, to plant extra acres of wheat in the year 1940 for harvesting in the year 1941, and said Secretary and his predecessor at the time said wheat was planted acquiesced in the planting of extra acres of wheat to the extent of several million extra acres throughout the United States.

16. Plaintiff further alleges that he is without adequate remedy at law, and that there exists special, extraordinary, and exceptional circumstances making necessary the granting of injunctive relief to the plaintiff, and that unless the defendants are restrained from collecting the penalty aforesaid the plaintiff will suffer irreparable injury and damage. That unless restrained from doing so, the said defendants will attempt to enforce a lien on the wheat crop grown by said plaintiff, although without authority of law to do so.

SECOND CAUSE OF ACTION

Said plaintiff, for his second cause of action, adopts all of the allegations and averments contained in his first cause of action, and incorporates the same herein by reference to the same extent as if copied herein in full and at length, and further alleges and states:

1. That this is an actual and immediate controversy between plaintiff and the defendants herein and as an action brought for the purpose of obtaining a declaratory judgment as authorized and provided by the laws of the United States in such cases.

2. That the determination of the issues herein is of great importance to plaintiff and the public generally, and that by reason of the conflicting and diversified claims of various persons dealing with the defendant, and other County Committees throughout the State of Ohio, and the United States, this Court
12 should assume jurisdiction and determine the issues herein relating to the regularity or irregularity of said Act, as amended, irrespective of whether plaintiff is granted the relief sought for in his first cause of action herein.

3. Plaintiff further alleges that whether the prayer relating to his first cause of action be granted or denied, he prosecutes this, his second cause of action in good faith for the purpose of establishing, fixing, and determining the rights of the parties hereto, and all others dealing with the defendants herein, and other County Committees within and without the State of Ohio, and notwithstanding the granting or denying of any relief to plaintiff under his first cause of action, this Court should grant injunctive relief against the enforcement of the penalty referred to in plaintiff's first cause of action herein.

Wherefore, said plaintiff prays for a judgment and decree of this Court declaring said Agricultural Adjustment Act of 1938, as amended, insofar as the same attempts to enforce a penalty against this plaintiff and his property, invalid, unenforceable, and in violation of the Constitution of the United States, and further declaring that all of the acts of the defendants herein in attempting to enforce payment and collection of said penalty to be illegal, unenforceable, and void, and to declare that the aforesaid penalty provisions of said Act are unenforceable, unauthorized and illegal, and that plaintiff is not liable for said alleged penalties, and that plaintiff cannot be required and compelled to comply with the penalty provisions of said Act as amended.

Plaintiff further prays for a judgment and decree of this Court permanently enjoining and restraining the defendants from bringing, directly or indirectly any proceeding at law or in equity against this plaintiff to enforce said penalty, and from taking any action whatever against the plaintiff to enforce said penalty.

13 Wherefore, plaintiff prays that a declaratory judgment herein be entered declaring the provisions of said Agricultural Adjustment Act of 1938, as amended, insofar as the same relates to a penalty for the planting, growing, or harvesting of wheat in excess of alleged marketing quotas, are void and of no effect, for the reasons and on the grounds set forth in his bill of complaint, and for such other and further relief, judgment, orders, and decrees as the Court may find just, reasonable, and equitable.

(s) WEBB R. CLARK,

Webb R. Clark, Dayton, Ohio,

Attorney for Plaintiff.

(s) HARRY N. RUTZOHN,

Harry N. Rutzohn, Dayton, Ohio,

Attorney for Plaintiff.

(Verification of complaint executed by Roscoe C. Filburn.)

14 In United States District Court

Designation of members of statutory Three-Judge Court

Filed December 22, 1941

It having been made to appear to me as Acting Senior Circuit Judge of the Circuit Court of Appeals for the Sixth Circuit, that motions are pending in the United States District Court for the Southern District of Ohio sitting at Dayton, Ohio, for interlocutory injunctions based upon alleged unconstitutionality of the Agricultural Adjustment Act of 1938, as amended; and upon my

being advised that the statute, § 380 (a), Title 28, U. S. C. A., requires the District Judge before whom such motions are pending to request the senior Circuit Judge, or in his absence, the presiding judge of the Circuit in which such District Court is located, to designate two other judges (one of whom shall be a Circuit Judge) to participate in the hearing and determining of such motions; and having been requested by the District Judge of the said District sitting in Dayton, to make such designations, Now, Therefore,

Judge Florence E. Allen, Circuit Judge for the Sixth Circuit, and Judge John H. Druffel, District Judge for the Southern

District of Ohio, are hereby designated to sit with Robert

15 R. Nevin, District Judge of the said District, at Dayton,

Ohio, in the hearing and determining of the motions and applications in the above causes during the present term of the said District Court, or during any subsequent term to which the hearing upon the said motions may be continued.

Dated at Detroit, Michigan, this 19th day of December 1941.

CHARLES C. SIMONS,

Acting Senior United States Circuit Judge,

Sixth Judicial Circuit.

16

In United States District Court

Motion of defendants Carl R. Helke, Roy M. Baker, Homer W. Flinsbach, and Dale Williams to dismiss complaint

Filed August 16, 1941

Carl R. Helke, Roy M. Baker, Homer W. Flinsbach, and Dale Williams, defendants in the above-entitled case, by John S. L. Yost and W. Carroll Hunter, Special Assistants to the Attorney General, and Leo C. Crawford, United States Attorney for the Southern District of Ohio, acting under the direction of the Attorney General of the United States and the Department of Justice of the United States, move the court to dismiss the complaint in this case for the following reasons:

17 1. The County Agricultural Conservation Committee for Montgomery County, Ohio, of which the defendants Carl R. Helke, Roy M. Baker, and Homer T. Flinsbach are the only members, and the State Agricultural Conservation Committee for the State of Ohio, of which the defendant Dale Williams is described in the Complaint as Chairman, were organized under the provisions of the Soil Conservation and Domestic Allotment Act, as amended (U. S. C., Supp. V, Title 16, § 520g *et seq.*). As pro-

vided by Section 386 (a) of the Agricultural Adjustment Act of 1938, as amended, the said committges are utilized by the Secretary of Agriculture in the administration, by the said Secretary, of the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended. The said defendants aver that they have no power or authority, either as individuals or as members of the County and State Agricultural Conservation Committees, as aforesaid, to enforce the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, or to require the plaintiff to do, or refrain from doing, any of the acts complained of by the plaintiff, or anything whatsoever.

2. There is a lack of an indispensable party to the case in that the complaint seeks to restrain the enforcement, operation, and execution of the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, authority over which is vested, by said act, exclusively in the Secretary of Agriculture of the United States. A motion on behalf of the Secretary of Agriculture, named as defendant in this case, is now pending before the court for the dismissal of the action against him because of improper venue and because he has not been served with process in this action. The granting of said motion would result in the lack of an indispensable party in the case.

18 3. The complaint fails to state a claim against the defendants upon which relief can be granted.

/s/ JOHN S. L. YOST,
John S. L. Yost,

/s/ W. CARROLL HUNTER,
W. Carroll Hunter,

*Special Assistants to the Attorney General,
Department of Justice, Washington, D. C.*

/s/ CALVIN CRAWFORD,
Leo C. Crawford,
United States Attorney.

19 In United States District Court

*Waiver of objection to venue by Claude R. Wickard, Secretary of
Agriculture*

Filed January 22, 1942

Claude R. Wickard, Secretary of Agriculture of the United States, defendant in the above-entitled case, hereby waives his objection to venue in this action and withdraws the motion heretofore filed by him for the dismissal of the case as against him

on the ground of improper venue and improper service of summons.

(Signed) CALVIN CRAWFORD,
Leo C. Crawford,

United States Attorney, Dayton, Ohio.

(Signed) JOHN S. L. YOST,

(Signed) W. CARROLL HUNTER,

*Special Assistants to the Attorney General,
Department of Justice, Washington, D. C.
Attorneys for Claude R. Wickard,
Secretary of Agriculture of the United States.*

20

In United States District Court

*Answer of Defendant Claude R. Wickard, Secretary
of Agriculture of the United States*

Filed January 22, 1932

The answer of Claude R. Wickard, Secretary of Agriculture of the United States, defendant in the above-entitled case, to the complaint heretofore filed in said case, respectfully shows as follows:

FIRST DEFENSE TO FIRST CAUSE OF ACTION

1. The allegations contained in paragraphs one, two, three, four, five, six, and eight of the first cause of action set forth in the complaint are admitted, except that it is averred by the defendant that Dale Williams is a member of the State Agricultural Conservation Committee for Ohio but is not chairman of the said committee. The chairman of the said committee is Elmer F. Kruse. The County Agricultural Conservation Committee for Montgomery County, Ohio, referred to in paragraph two of the complaint, and the State Agricultural Conservation Committee for the State of Ohio, referred to in paragraph three of the complaint, are established under Section 8 (b) of the Soil Conservation and Domestic Allotment Act. (U. S. C., 1940 Edition, Title 16, Section 590 in (b)), and the said committees, pursuant to section 388 (a) of the Agricultural Adjustment Act of 1938 (U. S. C., 1940 Edition, Title 7, Section 1888), are utilized by the Secretary of Agriculture of the United States in the administration of the wheat marketing quota provisions of the act last mentioned as amended (U. S. C., 1940 Edition, Title 7, Sections 1281 et seq.; and 55 Stat. 203).

2. The allegations contained in paragraph seven of the first cause of action set forth in the complaint are admitted, but, in

this connection, the defendant refers to the provisions of the Agricultural Adjustment Act, as approved February 16, 1938, and to the amendments thereto, including the amendment of May 26, 1941 (55 Stat. 203) and the amendment of December 26, 1941 (— Stat. —), relating to wheat marketing quotas.

3. The defendant, in answering paragraph nine of the first cause of action set forth in the complaint, avers that farm marketing quotas for wheat are in effect under the Agricultural Adjustment Act of 1938, as amended, for the 1941 crop of wheat. Wheat produced by any farmer in excess of the farm marketing quota is, under the act, known as the "farm marketing excess" and declared to be available for marketing and subject to a marketing penalty. The penalty is 49 cents a bushel under the marketing quota program effective with respect to the 1941 crop of wheat. Each producer who has such a farm marketing excess is required to pay the marketing penalty thereon, or to store such excess, or to deliver the same to the Secretary of Agriculture of the United States. In the absence of the performance of this

22 duty by the producer, the buyer of any wheat of the producer is, under the act, required to pay the marketing penalty thereon and given the right to deduct the amount thereof from the purchase price paid to the producer. The administrative regulations issued by the Secretary of Agriculture pursuant to the authority contained in the act provide that all marketing penalties shall be paid to the Secretary of Agriculture, through the treasurer of the appropriate county agricultural conservation committee. All wheat produced on the farm is subject to a lien in favor of the United States for the amount of the marketing penalty.

It is admitted that the acreage allotment established for the farm of the plaintiff was 11.1 acres, and that the normal yield of wheat per acre for such farm was established at 20.1 bushels, and that notice of said allotment and normal yield was duly given to the plaintiff in July 1941. The defendant avers that a similar notice was given to the plaintiff in July 1940 prior to the planting of the plaintiff's 1941 crop of wheat. The defendant avers also that the plaintiff prevented the measurement of his farm, and consequently the defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation relating to the amount of farm marketing excess of wheat for the farm of the plaintiff. The defendant denies the allegation contained in said paragraph of the complaint to the effect that the farm marketing excess of wheat applicable to the plaintiff's farm is not subject to the payment of the marketing penalty. It is further denied by the defendant that

the plaintiff was notified by the County Agricultural Conservation Committee for Montgomery County, Ohio, that the farm marketing excess for his farm was 239 bushels.

23 4. The allegations contained in paragraph ten of the first cause of action set forth in the complaint are denied, except that it is admitted that the County Agricultural Conservation Committee for Montgomery County, Ohio, acting under the administrative regulations issued by the Secretary of Agriculture, has refused to issue to the plaintiff a marketing card whereby the plaintiff may market any of the wheat produced by him without payment by the buyer of the marketing penalty in respect to the applicable farm marketing excess. In this connection, the defendant refers to the provisions of the act as outlined above, and to the administrative regulations issued under the authority of the act relating to the payment of marketing penalties.

5. The defendant admits the allegations contained in paragraph eleven of the first cause of action set forth in the complaint, relating to the date of the referendum and to the time when farm marketing quotas for wheat for the 1941 crop were established. In this connection, the defendant avers that farm marketing quotas for wheat for the 1941 crop became effective upon the proclamation to that effect by the Secretary of Agriculture on May 9, 1941. The defendant denies the allegations contained in said paragraph to the effect that the payment by the plaintiff of the marketing penalty on his farm marketing excess will have the effect of confiscating his property without due compensation and without due process of law. The remaining allegations of paragraph eleven are denied.

6. The allegations contained in paragraphs twelve, thirteen, fourteen, fifteen, and sixteen of the first cause of action set forth in the complaint are denied, except that it is admitted

24 (1) that the wheat farmers of the nation were, prior to the holding of the wheat referendum on May 31, 1941, informed by the Department of Agriculture of the salient facts of the wheat industry and of the effects on such industry of the presence or absence of wheat marketing quotas, and (2) that the wheat marketing penalty under the act was 15 cents a bushel instead of 49 cents a bushel at the time of the planting of the plaintiff's wheat in 1940.

FIRST DEFENSE TO SECOND CAUSE OF ACTION

1. The defendant, in answering generally the second cause of action set forth in the complaint, adopts his foregoing answer to the first cause of action set forth in the complaint.

2. The defendant admits the allegations contained in paragraph one of the second cause of action set forth in the complaint to the

effect that an actual and immediate controversy exists as between the plaintiff and this defendant, but denies that any such controversy does, or can, exist as between the plaintiff and the remaining defendants.

3. The defendant admits the allegations contained in paragraph two of the second cause of action set forth in the complaint.

4. The defendant admits the allegations contained in paragraph three of the second cause of action set forth in the complaint, except that the defendant denies that the plaintiff is entitled to any of the relief prayed in the complaint.

SECOND DEFENSE TO FIRST AND SECOND CAUSES OF ACTION

It is averred by the defendant that the applicable provisions of the Agricultural Adjustment Act of 1938, as amended, as
25 aforesaid under which marketing quotas for wheat were established by the Secretary of Agriculture, through local committees, for wheat farms, including the farm operated by the plaintiff, constitute a regulation of the marketing of abnormally excessive supplies of wheat as in, and as directly affecting, interstate and foreign commerce, and that the provisions of said act which are drawn in question by the plaintiff in this case are in every respect consistent with the Constitution of the United States, and that the administrative actions taken by the defendant, as Secretary of Agriculture of the United States, relating to wheat marketing quotas for the 1941 crop of wheat were in conformity with the provisions of said act.

THIRD DEFENSE TO FIRST AND SECOND CAUSES OF ACTION

The complaint fails to state a claim upon which relief can be granted in either the first or second causes of action contained in the complaint.

(Signed) CALVIN CRAWFORD,

United States Attorney for the Southern District of Ohio,

Address Federal Building, Dayton, Ohio.

(Signed) JOHN S. L. YOST,

(Signed) W. CARROLL HUNTER,

Special Assistants to the Attorney General,

Department of Justice, Washington, D. C.

Service of a copy of the foregoing answer is hereby acknowledged this 8th day of January 1942.

(Signed) WEBB R. CLARK, *Dayton, Ohio.*

(Signed) HARRY N. ROUTZOHN, *Dayton, Ohio.*

Attorneys for Plaintiff.

In United States District Court

Stipulation of facts and evidence

Filed January 22, 1942

It is hereby stipulated by and between the parties to the above-entitled cause, by their attorneys of record, that the said cause shall be tried and heard for final judgment and decided upon the pleadings herein and this stipulation of facts and evidence, and that, for the purposes of this case, the matters and facts contained in this stipulation may be taken by the court as true and as constituting all of the evidence and facts upon which, in addition to the allegations of the complaint admitted in the answer to be true and those matters and facts of which the court takes judicial notice, a decision may be rendered and a final judgment entered herein: Provided, however, that each of the parties hereto expressly reserves the right to contend that any matter of fact or
27 evidence recited in this stipulation is not material or relevant to the issues herein and expressly reserves also the complete and full right to appellate review, as provided by law, of any judgment which may be entered in this cause. The exhibits hereinafter referred to and attached hereto are hereby made a part hereof.

I

ADMINISTRATIVE ACTION

The Secretary of Agriculture, acting pursuant to and in accordance with the applicable provisions of the Agricultural Adjustment Act of 1938, as amended, has issued the following proclamations, determinations, apportionments, regulations and instructions with respect to marketing quotas for the 1941 crop of wheat:

1. Proclamation to the effect that the national acreage allotment for the 1941 crop of wheat is 62,000,000 acres, and the total and normal supplies of wheat for the marketing year commencing July 1, 1940, are 949,000,000 and 872,000,000 bushels, respectively. (See Federal Register, Daily Edition, Vol. 5, No. 95, pp. 1725-1726.)

2. Apportionment of the national acreage allotment of 62,000,000 acres among the several States. (See Federal Register, Daily Edition, Vol. 5, No. 95, p. 1726.)

28 3. Apportionment of State acreage allotments among the counties. (See Federal Register, Daily Edition, Vol. 6, No. 86, pp. 2226-2231.)

4. Regulations relating to county normal yields of wheat. (See Federal Register, Daily Edition, Vol. 6, No. 2, pp. 33-37, 45.)

5. Regulations relating to the apportionment of county acreage allotments among farms in the county. (See Federal Register, Daily Editions, Vol. 5; No. 59, pp. 1148-1149; and Vol. 6, No. 79, pp. 2077-2079.)

6. Regulations relating to farm normal yields of wheat. (See Federal Register, Daily Editions, Vol. 6, No. 79, pp. 2077-2079.)

7. Proclamation under which the national marketing quota for wheat became effective with respect to the 1941 crop, wherein it is stated that the total supply of wheat for the marketing year beginning July 1, 1941, is 1,236,000,000 bushels and that such supply will exceed a normal year's domestic consumption and exports of 755,000,000 bushels by more than 35 percent. (See Federal Register, Daily Edition, Vol. 6, No. 93, p. 2375.)

8. Instructions relating to the referendum of wheat producers to be held on May 31, 1941. (See Federal Register, Daily Editions, Vol. 6, No. 36, pp. 1063-1065; Vol. 6, No. 94, pp. 2420-2421; and Vol. 6, No. 107, p. 2689.)

9. Proclamation of the results of the referendum held on May 31, 1941, wherein it is stated that a total of 559,630 wheat farmers voted in 40 States, and of this number 453,569 or 81 percent were in favor of marketing quotas and 106,061 or 19 percent were opposed to such quotas. (See Federal Register, Daily Edition, Vol. 6, No. 138, p. 3521.) A summary of the results of the referendum by States, as contained in a press release issued by the United States Department of Agriculture is as follows:

Summary of results of referendum by States

| 30 State | Number of votes cast | | | Percentage in favor |
|------------|----------------------|--------|---------|---------------------|
| | Yes | No | Total | |
| Alabama | 9 | 1 | 10 | 90.0 |
| Arizona | 111 | 3 | 114 | 97.4 |
| Arkansas | 119 | 11 | 130 | 91.5 |
| California | 1,986 | 1,020 | 3,006 | 66.1 |
| Colorado | 7,896 | 1,144 | 9,040 | 87.3 |
| Delaware | 805 | 76 | 881 | 91.4 |
| Georgia | 163 | 89 | 252 | 64.7 |
| Idaho | 12,081 | 764 | 12,845 | 94.1 |
| Illinois | 25,502 | 9,780 | 35,222 | 72.4 |
| Indiana | 20,340 | 10,839 | 31,179 | 65.2 |
| Iowa | 3,783 | 636 | 4,419 | 85.6 |
| Kansas | 81,398 | 20,508 | 101,906 | 79.8 |
| Kentucky | 4,081 | 692 | 4,773 | 85.5 |
| Louisiana | 1 | 12 | 13 | 7.7 |
| Maryland | 2,992 | 886 | 3,878 | 77.2 |
| Michigan | 5,270 | 1,643 | 6,913 | 76.2 |
| Minnesota | 20,614 | 3,282 | 23,896 | 86.3 |
| Missouri | 18,472 | 4,698 | 23,170 | 79.7 |
| Montana | 18,112 | 1,620 | 19,732 | 91.7 |

| State | Number of votes cast | | | Percentage in favor |
|----------------|----------------------|---------|---------|---------------------|
| | Yes | No | Total | |
| Nebraska | 33,206 | 7,224 | 40,430 | 82.1 |
| Nevada | 94 | 61 | 155 | 60.6 |
| New Jersey | 107 | 211 | 318 | 33.6 |
| New Mexico | 1,434 | 81 | 1,515 | 94.7 |
| New York | 1,087 | 909 | 1,996 | 54.5 |
| North Carolina | 1,919 | 371 | 2,290 | 83.8 |
| North Dakota | 66,253 | 3,798 | 69,961 | 94.7 |
| Ohio | 15,940 | 17,896 | 33,836 | 47.1 |
| Oklahoma | 31,562 | 7,712 | 39,274 | 79.4 |
| Oregon | 8,553 | 280 | 8,833 | 96.8 |
| Pennsylvania | 2,648 | 3,703 | 6,351 | 41.7 |
| South Carolina | 273 | 44 | 317 | 86.1 |
| South Dakota | 28,424 | 2,056 | 30,480 | 93.2 |
| Tennessee | 934 | 463 | 1,397 | 66.9 |
| Texas | 15,009 | 1,001 | 16,010 | 93.8 |
| Utah | 6,500 | 368 | 6,868 | 94.7 |
| Virginia | 2,218 | 976 | 3,194 | 69.4 |
| Washington | 14,364 | 960 | 15,324 | 93.6 |
| West Virginia | 269 | 161 | 430 | 62.2 |
| Wisconsin | 167 | 6 | 173 | 96.5 |
| Wyoming | 1,731 | 136 | 1,867 | 92.7 |
| United States | 453,569 | 206,061 | 659,630 | 81.0 |

31 10. Regulations relating to farm marketing quotas, marketing penalties, identification of wheat as subject to or as not subject to such penalties, and records and reports, known as Wheat-507 entitled "Regulations Pertaining to Wheat Marketing Quotas for the 1941 Crop of Wheat." (See Federal Register, Daily Edition, Vol. 6, No. 108, pp. 2695-2705.) These regulations were amended by the issuance of two supplements thereto. (See Federal Register, Daily Edition, Vol. 6, No. 137, pp. 3465-3467; Vol. 6, No. 175, pp. 4626.)

II

MARKETING QUOTA FOR FARM OPERATED BY PLAINTIFF IN MONTGOMERY COUNTY, OHIO

The plaintiff is a farmer who has for many years past been engaged in producing wheat on a farm situated in Montgomery County, Ohio, and owned by him. The plaintiff maintains on his farm a herd of dairy cattle and produces and sells milk. The plaintiff also raises poultry and sells poultry and eggs. The wheat produced by the plaintiff is winter wheat, which is planted in the fall. The 1941 crop of wheat harvested by the plaintiff was planted by him in the fall of 1940. The said crop was ready for harvest during the month of July 1941. A wheat

32 acreage allotment of 11.1 acres and a normal yield of wheat of 20.1 bushels an acre, were established for the farm of the plaintiff in July 1940, for the 1941 crop of wheat. Said allotment and normal yield were established by the Secretary

of Agriculture through the County Agricultural Conservation Committee for Montgomery County, Ohio, in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended, and the administrative regulations issued by the Secretary of Agriculture under the authority contained in the act. The plaintiff received notice thereof in July 1940, before the planting of his 1941 crop of wheat and also in July 1941, before the said crop was harvested by the plaintiff. It has been the practice of the plaintiff to dispose of the wheat produced by him in the following manner:

- (a) To sell a portion thereof.
- (b) To feed part of the same to poultry and livestock which, or the products of which, are in part sold by him and in part consumed on his farm.
- (c) To use a part of the same for grinding into flour for home consumption.
- (d) To retain a part of the same for use as seed for the ensuing crop of wheat.

33 The plaintiff's farm marketing excess for his 1941 crop of wheat amounts to 239 bushels in respect to which the applicable marketing penalty prescribed by said act amounts to \$117.11. The plaintiff has not paid the marketing penalty aforesaid and he has neither stored the farm marketing excess nor delivered same to the Secretary of Agriculture as provided by the administrative regulations issued by the Secretary of Agriculture under the authority contained in the act. The said county committee has, therefore, acting under the authority of the act and of the administrative regulations issued thereunder, refused to issue to the plaintiff a marketing card.

III

The questions presented for decision in this case relate solely to the constitutional validity of the act, the principal ones of which are as follows:

1. Whether the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, constitute a valid exercise of the power of the Congress to regulate interstate and foreign commerce.
2. Whether the wheat marketing penalty prescribed by the said act may be made applicable, as provided by the Congress in the act, to the plaintiff's farm marketing excess of wheat which is available for marketing but which has not actually been disposed of by the plaintiff.
3. Whether the wheat marketing quota provisions of the act, as applied to the plaintiff's 1941 crop of wheat which was

planted and practically ready for harvest before farm wheat marketing quotas became effective under the said act, are consistent with due process of law.

4. Whether the increase, under an amendment to the said act, in the rate of the marketing penalty from 15 cents a bushel to 49 cents a bushel after the plaintiff's 1941 crop of wheat was planted and practically ready for harvest is consistent with due process of law.

IV

SPEECH OF SECRETARY OF AGRICULTURE CLAUDE R. WICKARD.

On May 19, 1941, defendant Claude R. Wickard, Secretary of Agriculture, delivered an address by radio broadcast over Farm and Home Hour in Hutchinson, Kansas, at 11:30 o'clock, Eastern Standard Time, the same being in words and figures as follows:

35 United States Department of Agriculture, Washington, D. C.
For May 19, 1941, P. M. Papers:

WHEAT FARMERS AND THE BATTLE FOR DEMOCRACY

ADDRESS BY THE SECRETARY OF AGRICULTURE, CLAUDE R. WICKARD,
OVER FARM AND HOME HOUR IN HUTCHINSON, KANSAS, MONDAY,
MAY 19, AT 11:30 O'CLOCK, EASTERN STANDARD TIME

I welcome the opportunity to speak with you today, and I only wish it were possible for us to spend the time comfortably discussing some of the ordinary problems of the world, and of agriculture in particular.

Unfortunately, an ordinary problem is a luxury today. Before us are a whole set of extraordinary problems, born of a time as critical as any in all our history.

Overshadowing everything is the world crisis. The times through which we are passing will decide what kind of a future the United States will have. We are determining whether we intend to remain a great democracy, and perhaps a great world power.

We must plan our lives and everything we do in the light of the world situation. What farmers plant and when they plant it is directly affected by the titanic struggle going on overseas. Here in this great granary region, we must decide what to do about wheat in the light of the developments brought about

by the war. And one important decision about wheat must be made very soon—the decision on wheat marketing quotas on May 31.

36 This is a time of trouble and yet Americans have many things to be thankful for. One reason for thanksgiving is that the power of making decisions still rests with the people of the United States. When wheat farmers go to the polls on May 31 they vote their own convictions. They will say what is to be done. This is not true in many countries in the world today, and the number of countries in which the people speak and are heard has grown smaller and smaller within the past few years.

So while our problems multiply let us remember that the privilege of saying what will be done about them is priceless. It is a democratic privilege. Let us use wisely this privilege, so that it will be the heritage of our children. Nothing we can leave them will mean more to them, or more to the generations yet unborn over all this earth.

To make wise decisions, we need to know the facts. What then, in view of the vote on May 31, are some of the facts about wheat? For one thing, we have a record amount of old wheat on hand and a bumper crop in prospect. That is something to be looked at with satisfaction on one hand and with alarm on the other. The huge stocks of wheat show that the country has an ample supply of one of our most precious foods. In this critical time, the abundance of wheat should be a comfort to every person in America.

But farmers, by sad experience, have learned that large supplies can mean glutted markets, low prices, and hard times that bring almost as much suffering to farmers as scarcity of bread would bring to city consumers.

And, because of the world wheat situation, farmers this year have other reasons for alarm. They know that the usual world market for wheat has almost disappeared and that the world outside the United States has a record supply of wheat, too. From the standpoint of our exports, the wheat situation was never worse.

37 I spoke just a moment ago about our record carry-over of wheat. We are going into the new wheat marketing year with a carry-over of old wheat of around 400 million bushels. The bins are bulging, the terminals spilling over. Another good crop is coming along. The estimates foreshadow a total crop of around 800 million bushels.

Add that to the 400-million-bushel carry-over and we have almost a billion and a quarter bushels. What are we going to do with

all that wheat? We have storage capacity for 800 to 900 million bushels. Until the mills grind a couple of hundred million bushels some of this year's crop will be housed in temporary storage. Maybe some of it will be piled on the ground like Canada's 1940 crop.

We'll be lucky if we export 25 million bushels during the season. To be liberal, let's say we consume 700 million bushels domestically. That leaves 475 million bushels to carry into the succeeding marketing year. Plain arithmetic tells us how badly we need a wheat marketing quota.

Some farmers may ask why we need a wheat marketing quota if we don't need a corn quota. Well, we have found a new export demand for corn in the form of meat, milk, and eggs for Britain. Bigger pay rolls in this country mean more meat consumed at home. We want to be sure there is no shortage of corn to produce this food that we need for the British and for ourselves.

Britain will need little of our wheat and we have seen to it that there will be no shortage, no matter what the demand. Because of the uncertain world situation, we deliberately planted several million extra acres of wheat this year. Most of it turned out well. All danger of scarcity has passed and now the danger is the danger of glut. Farmers should not be penalized because they have provided insurance against shortages of food.

The nation wants farmers safeguarded against unfair
38 penalties. The nation also wants other protection given agriculture. One expression of this wish is the national farm programs. These programs protect all farmers. Since the second world war began, commodity loans have stood between wheat producers and the economic blitzkrieg.

Without the programs, wheat prices would be threatening the low record of 1932 instead of being within striking distance of parity as they are now.

As you all know, parity is one of the most important objectives of the national farm programs and will continue to be a goal, just as soil conservation, for example, will continue to be a goal. We've been trying to reach that parity goal since 1933 and we've made a lot of progress.

This Administration developed the parity concept and the President has worked for it all along. Had it not been for such set-backs as the Supreme Court decision which killed the original Triple-A, farmers probably would have had parity long ago. The President is still working for parity and in this connection, I have some grand news. I talked to the President only a few hours before I left Washington. He told me he wants the basic crops to reach parity this year. He told me also that he thinks

wheat farmers, taking loans and payments into account, will get parity on this year's crop.

This news is further proof—although none is needed—that Franklin D. Roosevelt is the best friend that farmers have ever had in the White House.

The President told me that he knew farmers want fair treatment and want to be fair in return. He said he was sure they did not want loans or money paid out of the Treasury to bring their prices higher than parity levels. He told me—and I use his exact words—"In this critical time, you can depend on it that farmers won't rock the boat."

39 If wheat farmers do get parity—and I'm sure they will—farmers should not overlook the work of farm organization leaders who have labored steadfastly for equality for agriculture. And, a lot of the credit must go to Congress. Only last week, the Senate and House sent to the White House a bill calling for an 85 percent of parity loan for wheat and the other basic commodities.

But no wheat loan will be made unless wheat farmers vote for marketing quotas and without the loan there is no hope for parity on wheat in 1941. So parity for wheat is up to the wheat farmers themselves.

For all their difficulties, American farmers have the fattest pocketbooks of any farmers in the world. Take wheat farmers, for example. If we look around us a bit, we will soon see how well off, comparatively speaking, they are and how effective the wheat programs really are. We need to look no further than across our northern border at our good neighbor, Canada.

Average prices of wheat to Kansas wheat growers in mid-May were about 80 cents. This compares with about 45 cents to Canadian farmers (United States money). Leaving out government payments, American producers probably will receive over twice as much for this year's wheat as Canadian growers.

Every wheat farmer ought to rejoice that he is raising wheat in the U. S. A. I join in that rejoicing for I am not only a corn-hog farmer, I am a wheat farmer too. I hold Wheat Marketing Quota Card No. 1, and am proud of the honor. My wheat allotment is only 36.7 acres. This may seem pretty small to your Kansas people, but in common with other small wheat growers, I want protection just as much as any one else.

In return for this protection, wheat farmers must help protect themselves. Congress has said to us, in effect:

"You'll be given protection if you'll put your own house in order. You'll be given protection provided you're willing to keep the market from being glutted with surplus wheat."

40 The law provides that wheat loans will not be made if wheat growers vote down marketing quotas. This provision seems fair to me. If we aren't willing to protect our own farm programs, we can't expect them to protect us.

The continuance—or discontinuance—of government loans on wheat is at stake in this referendum on May 31. To put it bluntly, no quotas, no loans. And, judging from prices in Canada, rejection of marketing quotas on May 31 would just about cut the price of wheat in this country in half.

Some other things involved in the decision wheat farmers are going to make on May 31 go beyond the wheat loan and prices for wheat. These things go to the heart of some questions that are being asked nowadays—Is democracy outmoded? Can we continue to make democracy effective? Can wheat farmers, for example, work out their economic problems through the democratic processes?

Now, of course, I am not saying that the continuance of democracy depends on the result of the wheat referendum. That would be going much too far. Yet in this period the world is looking at every move we make and how we meet every test. From these moves, conclusions will be drawn as whether our democracy has gone soft, or whether it is hard and packs a real punch, and whether it can do the job it must do to survive.

As a farmer, I know the necessity for higher prices for farm products. I know that parity prices are fair and just. But I want these parity prices to be put on a stable and lasting basis. High prices without adjustment of supply are certain to be followed by ruinously low prices. We know that from experience. We want fair prices now and fair prices later on. We don't want another Farm Board fiasco.

I wish that corn and wheat farmers were able to vote on marketing quotas before they plant their crops, instead of afterwards as is the case now. Cotton, tobacco and rice farmers vote on quotas before they plant and I see no good reason for denying this privilege to wheat and corn growers. I am sorry that the legislation authorizing loans at 85 percent of parity did not change the time for voting on wheat and corn quotas. This provision was recommended by the Department of Agriculture and we plan to recommend it to Congress again. Yet the fact that the referendum on wheat quotas comes after the crop is almost ready for harvest in no way alters the significance of the vote.

The wheat vote is significant but within the near future, farmers and the American people, have other decisions to make that are far more significant. We must decide how the nation is to conduct itself in a world that is on fire. Are we going to help put out the

flames or are we going to wait and hope that the blaze doesn't reach us?

I know the war seems a long way off and here in Kansas a lot of us feel safe because we have the good old Atlantic and Pacific oceans between us and the actual fighting. Perhaps some people rely also on Hitler's word that he has no designs on this hemisphere.

The ones who rely on Hitler's word must be a pretty small group after all. Chamberlain's England relied on Hitler's word. Poland relied on Hitler's word. Belgian and other conquered countries relied on Hitler's word. To Hitler a promise is something to be broken when the time comes.

"But what about the oceans?" someone may ask. They are very real things, thousands of miles wide.

Throughout our history we have been blessed by the existence of these oceans. We have been blessed by their existence, however, only because for more than 100 years they have remained in the control of friendly powers.

42. But if one or both of these oceans should fall under the control of powers unfriendly to us, then our friendly, protective oceans become highways of menace and invasion.

That is a simple fact, but it is of supreme importance to the future of this Nation.

For generations past the British Isles and the British Navy in the Atlantic Ocean have been friendly to us and have enabled us to keep most of our fleet in the broad reaches of the Pacific, there to protect our interests and our future. We do not yet have a fleet big enough to patrol two hostile oceans. Meanwhile, if we have the sense Yankees are traditionally credited with, we will do everything in our power to see that the British Navy remains intact and on our side.

Whatever may be said about past sins or present motives of Britain, is beside the point in this present moment. What is to the point, if we are hard-headedly concerned about the interests of the United States, is our ability and determination to keep Britain and the British Navy afloat and in control of the Atlantic Ocean.

Accordingly it is plainly to our interest, let alone being a national pledge and commitment, to live up to the announced intentions of the Lease-Lend Act. We agreed in that Act, by an overwhelming majority, to provide Britain and other democracies with the armament and the food with which to carry on the fight against aggression and world conquest.

It is true that Hitler has not crossed the English Channel. Now, why not? We all know why. It is because he is held back,

first, because of the courage and bravery of the people in Britain. Second, because he has respect for the English Navy and air force.

43 These obstacles stand between Hitler and the island of Britain. They also stand between Hitler and the United States.

I don't like to think of what would happen if the courage or endurance of the English gave out and the English Navy, the French Navy, the Italian Navy, the German Navy were all under control of the world's most ruthless conqueror. Add to this navy the potential production of the shipyards in countries under German control. What does it mean? It means that men and machines, could be transported to this hemisphere faster by the Atlantic Ocean than if that body of water were dry land. You could blow up railroads and their terminals, and you could wreck highways. But you can't blow up the ocean, and you can't wreck it.

The British Isles and the British Navy are our first line of defense. If they are taken over by any European country, our naval and air bases in the Atlantic and the Panama Canal would all be in a precarious position. If these bases fall into hostile hands, what then? You know the answer to that question as well as I do.

Together, the United States and Britain can exceed the production of Germany and all the countries she has occupied from Norway to Greece. But if England goes down, Germany and her Allies exceed us in productive capacity. Modern wars are won by productive power, the ability to make planes, tanks, and guns. Let those who advocate leaving Britain to her fate think about our situation if Britain should fall.

Let us not deceive ourselves. Some persons said Germany did not have the resources for a long war. She has them now or seems to be well on her way toward getting them. Hitler is systematically exploiting the conquered countries. They are paying billions of dollars in tribute to the conqueror and millions of their citizens are working for him. Millions of French, Belgium,

44 Dutch, and Danish farmers are working for the Nazis. They have to work for him whether they want to or not. Hitler has gained in strength from the time this war began. With Great Britain on her feet, the democracies still are stronger than the Nazis and Fascists combined. With Great Britain down, the picture changes.

We are producing food and munitions for Britain as fast as we can. We will be producing in even greater volume a few weeks and months hence. But now we learn that quite a bit of this product of our sweat and toil is not reaching its destination.

Some of it is getting no farther than the bottom of the Atlantic. Yet there are people who say all we have to do is produce and not bother about delivery.

But the Lease-Lend Act was not merely a device by which we would increase production in this country; my recollection is that it was a pledge, a deliberate and carefully conceived pledge, to help the democracies of the world in their battle against Nazism. We made this pledge only after weeks of debate and careful consideration, with full knowledge that whatever the risks involved, this was the course best calculated to preserve and protect the interests of the United States.

There is no sense in producing for delivery at the bottom of the ocean. There can be only absurdity, anticlimax, and danger in that course. I say, let's see that the goods are delivered. And I'm sure the people here in the Plains—you Kansans backed by the tradition of the Beecher Bible and rifle colonists of Fred Funston and his Twentieth Infantry—I'm sure you say the same. Your history proclaims that you will do what needs to be done in your own interests and in the national interests. It may have to be done the hard way but that's a Kansas tradition also. Your State motto says—"To the stars through difficulties."

The same spirit of determination runs through all these Plains States that are the great wheat belt of America. Kansans, 45 Oklahomans, Nebraskans, Texans, Dakotans and all the men of the Plains are ready to fight for the ideals they hold sacred. You will do what has to be done.

Some persons are saying that the odds against us already are too great; that we'd better pipe down and keep quiet. I don't think there are many of those persons or that they amount to very much. The events of recent days give new proof that the Nazis are deliberately trying to form a combination of nations to attack us. I know what the answer of the American people will be to that. The answer to any dictatorship combination aimed at the United States will be something the Nazis understand and respect—armed might.

All over this world of ours humanity is watching the United States. We are the only hope of millions living in bondage. In Latin-America, many countries are watching us to see whether we will make good our promises, or whether we simply mean to talk and gesture. If democracy has grown soft and flabby, why perhaps other countries will embrace a way of life that, for all its terror, seems to have iron in its soul. In Britain millions are watching us. They have fought a gallant fight but they can't go on unless our help is made effective. The Nazis and Fascists are watching us and every sign of indecision and division fills them with joy. If we simply talk, why the rest is easy. They'll rule the world and spit on democracy every day.

I don't think the American people want to live in a world run by the Nazis. I don't think they intend to live in a world run by the Nazis. A world run by the Nazis means the destruction of freedom and democracy in the United States. We'll do whatever is necessary to protect our freedom and our democracy.

46

V

STATEMENT OF ECONOMIC DATA OF THE WHEAT INDUSTRY ¹

I

SCOPE OF WHEAT GROWING

The major food plant, wheat, is grown extensively throughout the world, occupying about 400 million acres a year in more than 50 different countries. Certain countries stand out on Map 1 as important producers of wheat. Wheat acreage in European countries averaged 77 million acres in the 1930's, but European countries as a whole consume more wheat than they produce. The important surplus-producing countries competing with the United States in the world markets are Argentina, Australia, Canada, the Danubian countries, and the Union of Soviet Socialist Republics. Average acreage during the ten years 1930 to 1939 in these countries was 19 million, 14 million, 26 million, 21 million, and about 90 million acres, respectively. Seeded wheat acreage in the United States during the same period averaged 50 million acres. Chart 1 and Table 1 show acreage in the important wheat-producing countries from 1921 to date.

Wheat is not grown to any extent in the warm, humid parts of the world and is confined almost entirely to regions with temperate climates. Where the moisture is not excessive it is grown in relatively warm climates, as in Northern Africa, India, and Mexico. Both India and China are commonly thought of as rice countries, but India grows about 35 and China around 50 million acres of wheat.

47 Wheat is one of the most important crops produced in the United States. According to the 1939 Census, it is grown in every State except Florida, and in 2,634 of the 3,072 counties in the United States. About one-quarter, or nearly one and a half millions, of the farms of the United States grow wheat, with less than one percent of the farms growing wheat in some of the New England and Southern States and an average of 64 percent for Kansas and 89 percent for North Dakota. Map 2 shows distribution of wheat production by counties, and Map 3 and table 2 show data on number and percentage of farms growing wheat.

¹ This Statement is based on several publications of the Department of Agriculture and a few publications prepared outside the Department.

In 1939 over 50 million acres of wheat were harvested, with the average acreage of wheat harvested per farm varying from 3 and 4 acres in some of the New England and Southern States to 155 acres for Washington. For Montana, the average acreage of wheat was 121, California 118, North Dakota 105, and Texas 104 acres per wheat farm. Again, in the very minor wheat-producing States, wheat acreage harvested in 1939 was less than one percent of the cropland, and in Kansas and Washington it averaged 27 percent. An average of 25 percent of the cropland in North Dakota and 21 percent in Montana and Oklahoma was given over to wheat. Table 2 gives these data by States.

In the areas of great specialization in wheat growing, the price of wheat not only directly affects the welfare of all the farmers dependent upon the crop for a part or all of their income, but also vitally affects the whole community. The South is dependent upon the North for its wheat and flour and the manufacturing cities of the East depend upon States to the West for most of their bread grain supplies. Importance of wheat growing, by States, is shown by Tables 3, 4, 5, 6, and 7 which give data on seeded and harvested acreages of wheat, yield per acre, total production, and farm value, from 1926 to 1941.

For the purposes of the United States official grain standards, wheat is divided into seven commercial classes: (1) Hard Red Spring, (2) Durum, (3) Red Durum, (4) Hard Red Winter, (5) Soft Red Winter, (6) White, and (7) Mixed. Each of the classes has two, three, or four subclasses, and each subclass has five numerical grades. Subclasses are recognized because, within a class, the best outward index of quality from the standpoint of utilization in flour, is the color and texture of the kernels; that is, whether dark, hard, and vitreous, or yellow, mottled, and starchy. Wheat of one class may include not more than 10 percent of wheats of other classes. The mixed wheat class includes all mixtures of wheat not provided for in the other six classes.

Wheat acreage in the United States is concentrated in four or five main areas. Acreage has been designated on Map 4 according to the principal class of wheat grown, and Chart 2 and Table 8 show the wheat acreage in these regions from 1919 to 1940.

Hard Red Spring wheat is grown principally in the northern Great Plains area; that is, in Montana, North Dakota, South

Dakota, and western Minnesota, where the winters are too severe for the production of winter wheat. In North and

South Dakota and western Minnesota considerable acreage of Durum wheat, flax, oats, and barley is grown, but in Montana less emphasis is placed on these crops. Throughout this region the topography is level and well suited for large-scale grain farming, and the distribution of rainfall, fertility of the soil, and

length of growing season render the region more adapted to the production of wheat than any other crop. Much of the wheat in this area west of the 100th Meridian is alternated with summer fallow. Most of the wheat is sold for cash, although some farms and ranches grow wheat for feed as hay or grain. The strongest flour for bread making is produced from this high-protein Hard Red Spring wheat.

The Durum wheats are grown principally in eastern North Dakota and South Dakota and occupy a part of the same territory in which Hard Red Spring wheat is grown. Durum wheat is used largely for making semolina, from which macaroni, spaghetti, and similar products are manufactured. Durum wheat that is not used by the macaroni industry is utilized for feed or is blended with other classes of wheat or flour.

Hard Red Winter wheat is grown chiefly in the central and southern Great Plains area, where hot summers and rather severe, dry winters prevail. The varieties of this class of wheat are among the most winter hardy and drought- and heat-resistant of any grown in the world. Kansas, Texas, Oklahoma, Nebraska,
50 and eastern Colorado produce almost all of the Hard Red Winter wheat. In this region there is a simple cropping system, consisting principally of wheat in combination with grain sorghums, corn, or barley as feed crops. In the area west of the 100th Meridian and north of Oklahoma much of the wheat is alternated with summer fallow. Here also most of the wheat is sold for cash. The region as a whole is a level, unbroken, treeless plain, lending itself well to the use of machine methods and large-scale operations. Production is on a large scale, particularly in the Panhandle of Texas and Oklahoma and southwestern Kansas. Hard Red Winter wheat is the largest and in many respects, the most important commercial class of wheat in the United States. More than 27 million acres were seeded to wheat in the Hard Red Winter wheat region for 1940, which is over 40 percent of all wheat seeded in the United States. This wheat ranks close to Hard Red Spring wheat in protein content and bread-making qualities and is used extensively for blending with softer varieties and with wheats of low protein content.

Soft Red Winter wheat is grown principally in the eastern half of the United States. One of the main areas comprises the Corn Belt States of Illinois, Indiana, Ohio, and Missouri. Throughout this region the rainfall and temperature conditions are favorable to both corn and wheat production. In fact, corn is the more important crop of the region, and wheat is grown here mainly because it fits well into the farming system. Wheat and oats are
51 used as a nurse crop to get the land into a hay crop. The scale of operation in this area is considerably smaller than that practiced in the other two areas discussed. Soft Red Winter

wheat is used in the manufacture of both bread-making and pastry flours, but flour from Hard Red Spring and Hard Red Winter wheats is usually blended with that of this class to make it a stronger bread flour.

The other main Soft Red Winter wheat producing area is in the Appalachian Plateau, centering in southeastern Pennsylvania, Maryland, Delaware, and northern Virginia. A common rotation in this area is sod, a row crop, oats, wheat, and back to sod for one or two years. Wheat is considered the best nurse crop for the seeding of grasses. Almost all of the wheat farmers in this area use some wheat for feeding purposes, but only a few use their own wheat for flour.

Scattered areas or farms producing Soft Red Winter wheat are found in Kentucky, Tennessee, West Virginia, southern Virginia, North and South Carolina, and Georgia, and although the production of wheat in these areas is of little importance nationally, it plays a fairly important role in the agriculture of these localities. Wheat in this area is grown largely as a supplement to, and in rotation with, other crops. It serves, along with legumes and grasses, as an important cover crop to prevent soil erosion and leaching. It is often grown because it can be converted to cash before the main cash crops of the area are harvested. Wheat often provides satisfactory pasture in the fall and winter, and is sometimes grown for hay. In much of this area wheat is grown for local consumption as flour as there are many small mills in the region and to a large extent home-grown wheat is ground instead of shipping in flour.

White wheat is grown chiefly in the far western States, especially in Washington, Oregon, and Idaho, centering in the Columbia River Basin, where both winter and spring varieties are grown. It is also grown to quite an extent in California and also in Michigan and New York. The Columbia River Basin is one of the most noted dryland wheat farming regions in the United States. Because of low rainfall the prevailing practice in this region is to alternate wheat and summer fallow. Even in the parts of the region where climatic conditions do not preclude alternatives, wheat continues to be the principal crop, and large scale grain farming is practiced in the whole region. Table 2 shows that in 1939, Washington's 3,476 bushels was by far the largest average wheat production per wheat farm of any State. The soft white wheat that is grown in this region is used in making biscuit and pastry flours and breakfast foods, or is blended with hard wheats for bread flours. A large percentage of White wheat produced is exported, for which the Orient has been its most important market.

Map 1

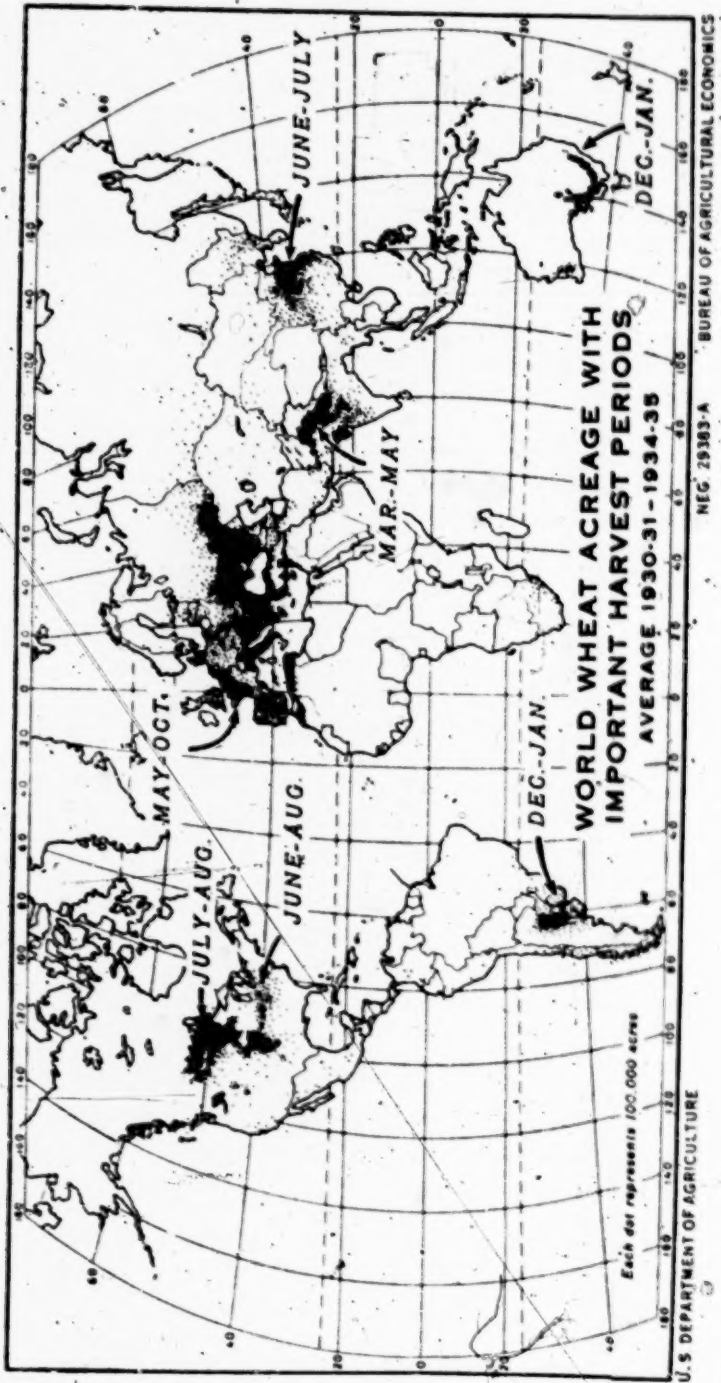
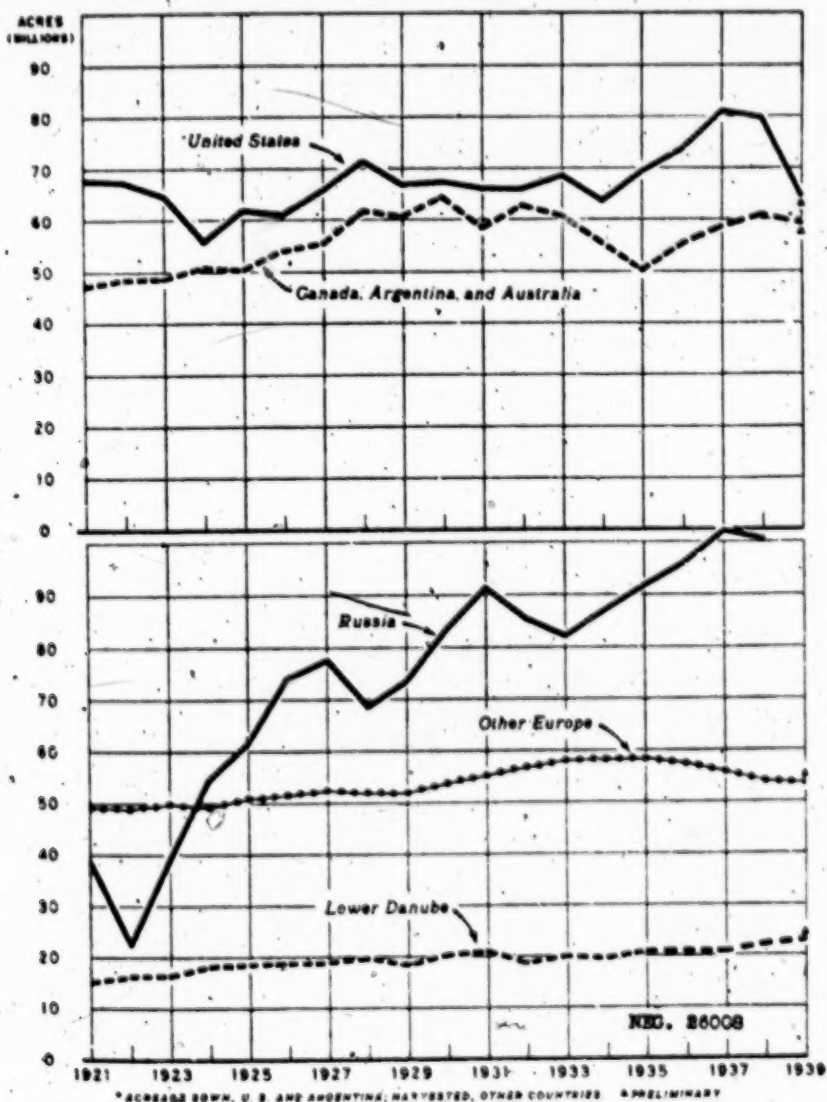


Chart 1

WHEAT: ACREAGE IN SPECIFIED COUNTRIES, 1921-39*



Wheat acreage increased generally from about 1924 to about 1937. Reductions in the 3 major exporting countries in 1934-36, were mostly due to unfavorable weather conditions. The greatest increase has taken place in Russia, but there was also an increase in the wheat area of the importing countries of Europe following 1929, when restrictions on the importation and use of foreign wheats became drastic.

TABLE 1.—Wheat: Acreage¹ in Specified Countries, 1921 to 1940

(Million acres)

| Year of harvest ² | World, excluding U.S.S.R. and China | United States | Canada | Argentina | Australia | Europe | | | U.S.S.R. |
|------------------------------|-------------------------------------|---------------|--------|-----------|-----------|--------|--------------|-------|----------|
| | | | | | | All | Lower Danube | Other | |
| 1921 | (*) | 68 | 23 | 14 | 10 | 64 | 15 | 49 | 35 |
| 1922 | (*) | 67 | 22 | 16 | 10 | 65 | 16 | 49 | 22 |
| 1923 | 236 | 65 | 22 | 17 | 10 | 66 | 16 | 50 | 39 |
| 1924 | 229 | 56 | 21 | 18 | 11 | 67 | 18 | 49 | 54 |
| 1925 | 241 | 62 | 21 | 19 | 10 | 69 | 19 | 50 | 62 |
| 1926 | 245 | 61 | 23 | 19 | 12 | 70 | 19 | 51 | 74 |
| 1927 | 250 | 66 | 22 | 21 | 12 | 71 | 19 | 52 | 77 |
| 1928 | 266 | 71 | 24 | 23 | 15 | 71 | 20 | 51 | 68 |
| 1929 | 259 | 67 | 25 | 20 | 15 | 70 | 18 | 52 | 74 |
| 1930 | 268 | 67 | 25 | 21 | 18 | 74 | 20 | 54 | 83 |
| 1931 | 266 | 66 | 26 | 17 | 15 | 76 | 21 | 55 | 91 |
| 1932 | 272 | 66 | 27 | 20 | 16 | 78 | 19 | 56 | 85 |
| 1933 | 274 | 68 | 26 | 20 | 15 | 78 | 20 | 58 | 82 |
| 1934 | 267 | 64 | 24 | 19 | 13 | 78 | 20 | 58 | 87 |
| 1935 | 269 | 69 | 24 | 14 | 12 | 79 | 21 | 58 | 92 |
| 1936 | 270 | 74 | 26 | 19 | 12 | 78 | 21 | 57 | 96 |
| 1937 | 280 | 81 | 26 | 21 | 14 | 77 | 21 | 56 | 102 |
| 1938 | 292 | 80 | 26 | 21 | 14 | 76 | 22 | 54 | 101 |
| 1939 | 274 | 64 | 27 | 18 | 13 | 77 | 23 | 54 | (*) |
| 1940 | 270 | 62 | 29 | 18 | 12 | (*) | (*) | (*) | (*) |

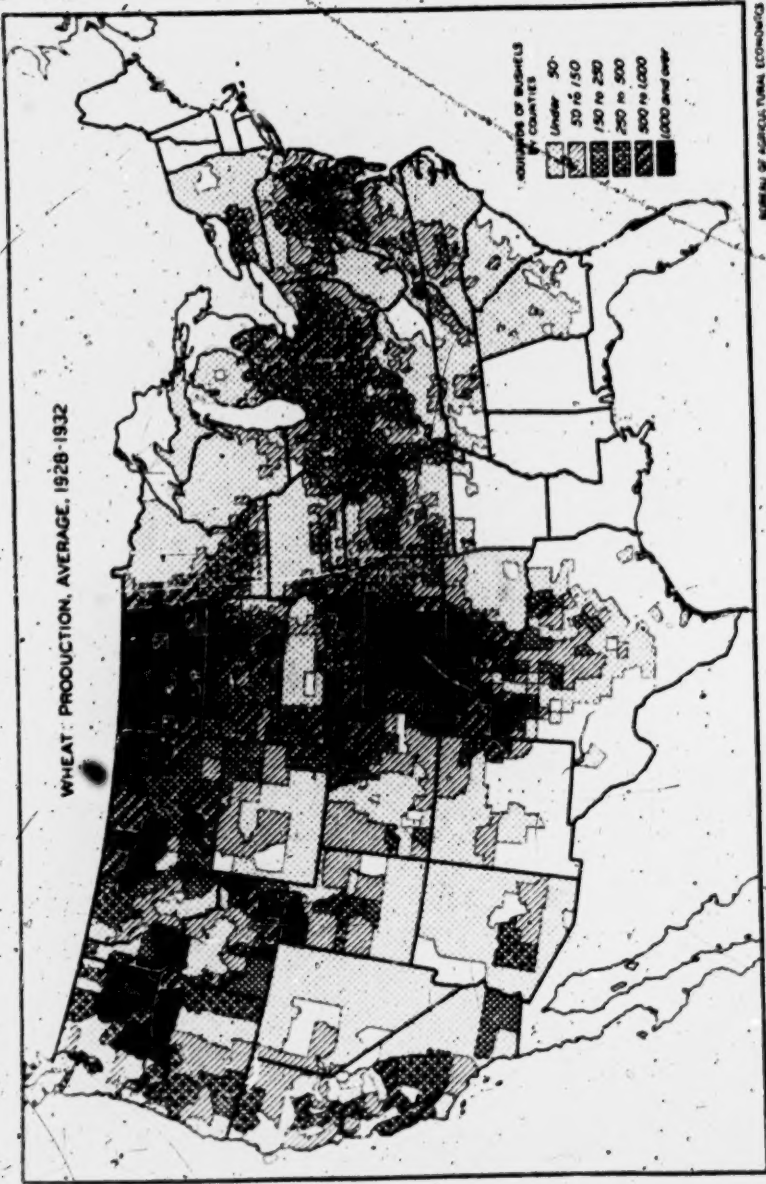
All figures are acreage harvested except the U. S. and Argentina, which are acreage sown.

² Refers to year of harvest in Northern Hemisphere, although includes data for the Southern Hemisphere where the harvest ends early the following year.

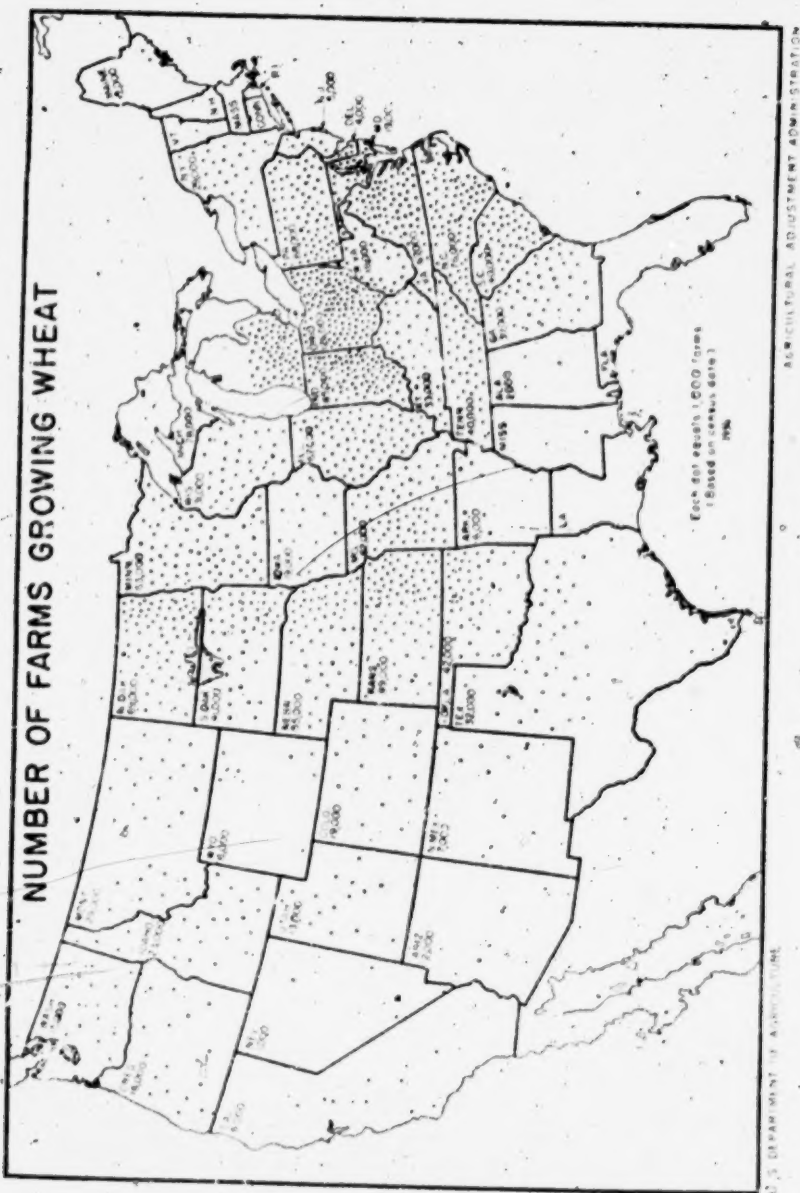
³ Preliminary.

⁴ Not available.

Map 2



Map 3



57 TABLE 2.—Number and size of farms with particular reference to wheat farms, by States, 1939 census

| State | Total farms | Farms harvesting wheat | Percent of total farms harvesting wheat | Average wheat production per wheat farm | Average wheat acreage harvested per wheat farm | Wheat acreage harvested as percent of cropland | Percent of wheat acreage harvested with combine (1938) |
|----------------------|-------------|------------------------|---|---|--|--|--|
| | Number | Number | Percent | Bushels | Acres | Percent | Percent |
| Maine | 38,980 | 509 | 1 | 56 | 3 | (1) | (2) |
| New Hampshire | 16,554 | 11 | (1) | 71 | 4 | (1) | (2) |
| Vermont | 23,582 | 57 | (1) | 75 | 4 | (1) | (2) |
| Massachusetts | 31,897 | 38 | (1) | 145 | 7 | (1) | (2) |
| Rhode Island | 3,014 | 7 | (1) | 150 | 7 | (1) | (2) |
| Connecticut | 21,163 | 43 | (1) | 71 | 3 | (1) | (2) |
| New York | 153,238 | 26,825 | 18 | 244 | 10 | 3 | 11 |
| New Jersey | 25,835 | 4,141 | 16 | 266 | 12 | 4 | 24 |
| Pennsylvania | 169,027 | 81,325 | 48 | 222 | 11 | 10 | 6 |
| Ohio | 233,783 | 130,822 | 52 | 307 | 15 | 12 | 22 |
| Indiana | 184,549 | 75,411 | 41 | 340 | 19 | 10 | 30 |
| Illinois | 213,439 | 63,363 | 30 | 601 | 29 | 7 | 44 |
| Michigan | 187,589 | 69,197 | 37 | 228 | 11 | 6 | 16 |
| Wisconsin | 186,735 | 18,856 | 10 | 51 | 4 | 1 | 3 |
| Minnesota | 197,351 | 81,167 | 41 | 251 | 18 | 6 | 6 |
| Iowa | 213,318 | 21,601 | 10 | 304 | 17 | 1 | 28 |
| Missouri | 256,100 | 70,958 | 28 | 435 | 26 | 8 | 22 |
| North Dakota | 73,962 | 65,815 | 89 | 1,052 | 105 | 25 | 23 |
| South Dakota | 72,454 | 40,337 | 56 | 431 | 51 | 9 | 19 |
| Nebraska | 121,062 | 58,212 | 48 | 596 | 54 | 12 | 51 |
| Kansas | 156,327 | 100,240 | 64 | 1,121 | 92 | 27 | 82 |
| District of Columbia | 65 | | | | | | |
| Delaware | 8,994 | 2,829 | 31 | 400 | 23 | 11 | 11 |
| Maryland | 42,110 | 17,140 | 41 | 384 | 20 | 13 | 3 |
| Virginia | 174,885 | 52,640 | 30 | 137 | 9 | 6 | 3 |
| West Virginia | 99,282 | 16,223 | 16 | 110 | 8 | 3 | 1 |
| North Carolina | 278,276 | 57,695 | 21 | 56 | 7 | 5 | 11 |
| South Carolina | 137,558 | 41,111 | 30 | 52 | 4 | 3 | 8 |
| Georgia | 216,033 | 29,911 | 14 | 55 | 5 | 1 | 11 |
| Florida | 62,248 | | | | | | |
| Kentucky | 252,894 | 30,197 | 12 | 121 | 11 | 2 | 8 |
| Tennessee | 247,617 | 35,305 | 14 | 110 | 10 | 3 | 6 |
| Alabama | 231,746 | 967 | (1) | 56 | 5 | (1) | 22 |
| Mississippi | 291,092 | 79 | (1) | 413 | 16 | (1) | (1) |
| Arkansas | 216,674 | 3,204 | 1 | 110 | 10 | (1) | 12 |
| Louisiana | 150,007 | 8 | (1) | 75 | 4 | (1) | (1) |
| Oklahoma | 179,687 | 51,250 | 29 | 1,141 | 81 | 21 | 70 |
| Texas | 418,062 | 26,387 | 6 | 1,065 | 121 | 6 | 82 |
| Montana | 41,823 | 25,192 | 60 | 1,602 | 121 | 21 | 55 |
| Idaho | 43,653 | 22,795 | 52 | 979 | 39 | 19 | 40 |
| Wyoming | 15,018 | 4,369 | 29 | 412 | 37 | 5 | 32 |
| Colorado | 51,436 | 15,906 | 31 | 715 | 64 | 8 | 44 |
| New Mexico | 34,105 | 6,211 | 18 | 498 | 43 | 6 | 58 |
| Arizona | 18,468 | 1,380 | 7 | 442 | 18 | 2 | 93 |
| Utah | 25,411 | 12,301 | 48 | 330 | 16 | 11 | 41 |
| Nevada | 3,573 | 832 | 23 | 423 | 15 | 1 | 63 |
| Washington | 81,686 | 12,668 | 16 | 3,476 | 155 | 27 | 83 |
| Oregon | 61,829 | 14,734 | 24 | 1,042 | 49 | 14 | 78 |
| California | 132,658 | 5,011 | 4 | 2,070 | 118 | 5 | 95 |
| United States | 6,096,799 | 1,385,279 | 23 | 512 | 36 | 10 | 49 |

1 Less than 0.5 percent

2 No information obtained.

58 TABLE 3.—All wheat: seeded acreage, by States,¹ 1926 to 1941

| State | 1926 | 1927 | 1928 | 1929 | 1930 | 1931 | 1932 | 1933 |
|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres |
| Maine | 4 | 3 | 3 | 2 | 2 | 2 | 4 | 2 |
| Vermont | 2 | 2 | 1 | 1 | 1 | 1 | 1 | 1 |
| New York | 302 | 304 | 336 | 247 | 243 | 213 | 204 | 241 |
| New Jersey | 67 | 63 | 58 | 55 | 55 | 53 | 52 | 50 |
| Pennsylvania | 1,154 | 1,049 | 1,100 | 997 | 1,016 | 970 | 936 | 961 |
| Ohio | 1,783 | 1,627 | 2,342 | 1,625 | 1,952 | 1,879 | 1,765 | 2,121 |
| Indiana | 1,818 | 1,930 | 2,386 | 1,633 | 1,705 | 1,746 | 1,515 | 1,690 |
| Illinois | 2,377 | 2,591 | 3,519 | 2,265 | 2,213 | 2,111 | 1,717 | 1,931 |
| Michigan | 965 | 817 | 871 | 802 | 746 | 745 | 741 | 911 |
| Wisconsin | 129 | 136 | 113 | 97 | 101 | 90 | 112 | 108 |
| Minnesota | 1,885 | 1,780 | 1,663 | 1,427 | 1,402 | 1,229 | 1,472 | 1,716 |
| Iowa | 401 | 462 | 579 | 438 | 442 | 368 | 301 | 271 |
| Missouri | 1,489 | 1,754 | 2,230 | 1,597 | 1,436 | 1,612 | 1,559 | 1,418 |
| North Dakota | 9,461 | 10,336 | 11,043 | 10,694 | 10,046 | 10,190 | 10,898 | 11,372 |
| South Dakota | 2,920 | 3,255 | 3,819 | 3,758 | 3,864 | 3,518 | 3,931 | 4,329 |
| Nebraska | 3,548 | 3,881 | 4,154 | 4,047 | 4,071 | 3,644 | 3,322 | 3,364 |
| Kansas | 11,095 | 12,750 | 12,761 | 13,142 | 13,687 | 13,898 | 12,963 | 13,231 |
| Delaware | 108 | 102 | 106 | 107 | 106 | 96 | 85 | 87 |
| Maryland | 497 | 497 | 511 | 514 | 493 | 445 | 414 | 419 |
| Virginia | 629 | 633 | 647 | 667 | 599 | 621 | 594 | 578 |
| West Virginia | 126 | 114 | 119 | 106 | 122 | 134 | 123 | 133 |
| North Carolina | 391 | 392 | 388 | 360 | 277 | 363 | 426 | 452 |
| South Carolina | 47 | 77 | 61 | 55 | 40 | 72 | 131 | 128 |
| Georgia | 84 | 98 | 69 | 51 | 30 | 64 | 137 | 140 |
| Kentucky | 238 | 275 | 393 | 209 | 220 | 295 | 360 | 364 |
| Tennessee | 362 | 413 | 431 | 292 | 222 | 296 | 349 | 376 |
| Alabama | 3 | 4 | 2 | 2 | 2 | 4 | 7 | 5 |
| Mississippi | 2 | 3 | 2 | 2 | 2 | 4 | 7 | 5 |
| Arkansas | 26 | 29 | 23 | 18 | 30 | 61 | 58 | 55 |
| Oklahoma | 4,420 | 4,765 | 4,960 | 4,868 | 4,576 | 4,615 | 4,407 | 4,419 |
| Texas | 2,182 | 2,868 | 3,102 | 3,272 | 3,971 | 4,594 | 4,710 | 4,784 |
| Montana | 3,790 | 4,107 | 4,575 | 4,771 | 4,643 | 4,170 | 4,476 | 4,068 |
| Idaho | 1,143 | 1,280 | 1,342 | 1,329 | 1,251 | 990 | 1,188 | 1,064 |
| Wyoming | 244 | 300 | 369 | 368 | 364 | 389 | 385 | 372 |
| Colorado | 2,090 | 2,273 | 2,227 | 1,899 | 2,016 | 1,678 | 1,700 | 1,326 |
| New Mexico | 249 | 262 | 372 | 421 | 464 | 496 | 463 | 432 |
| Arizona | 20 | 31 | 22 | 18 | 17 | 24 | 27 | 44 |
| Utah | 230 | 236 | 258 | 270 | 296 | 291 | 278 | 257 |
| Nevada | 17 | 18 | 16 | 14 | 13 | 14 | 18 | 16 |
| Washington | 2,022 | 2,211 | 2,312 | 2,507 | 2,698 | 2,369 | 2,385 | 3,039 |
| Oregon | 1,091 | 1,111 | 1,045 | 1,104 | 1,071 | 988 | 1,022 | 1,525 |
| California | 702 | 794 | 802 | 791 | 667 | 695 | 669 | 782 |
| United States | 60,712 | 65,661 | 71,152 | 66,840 | 67,156 | 65,908 | 65,913 | 68,485 |

¹ No data reported for some New England and Southern States which show a little wheat in 1939 Census.

TABLE 3. All wheat: seeded acreage, by States,¹ 1926 to 1941—Con.

| 59 | State | 1934 | 1935 | 1936 | 1937 | 1938 | 1939 | 1940 ² | 1941 ² |
|----|----------------|----------------|----------------|----------------|----------------|----------------|----------------|-------------------|-------------------|
| | | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres |
| | Maine | 7 | 10 | 7 | 4 | 4 | 4 | 4 | 4 |
| | Vermont | | | | | | | | |
| | New York | 285 | 297 | 290 | 356 | 311 | 278 | 319 | 319 |
| | New Jersey | 53 | 59 | 69 | 76 | 72 | 79 | 72 | 75 |
| | Pennsylvania | 990 | 1,024 | 1,054 | 1,095 | 1,082 | 954 | 945 | 945 |
| | Ohio | 2,045 | 2,153 | 2,315 | 2,546 | 2,416 | 2,038 | 1,981 | 2,019 |
| | Indiana | 1,883 | 1,945 | 1,868 | 2,309 | 1,918 | 1,627 | 1,575 | 1,606 |
| | Illinois | 2,188 | 2,137 | 2,260 | 2,841 | 2,340 | 2,072 | 1,800 | 1,883 |
| | Michigan | 899 | 887 | 843 | 1,046 | 927 | 796 | 769 | 754 |
| | Wisconsin | 124 | 139 | 110 | 135 | 123 | 93 | 88 | 89 |
| | Minnesota | 1,644 | 2,084 | 1,900 | 2,206 | 2,638 | 1,609 | 1,629 | 1,597 |
| | Iowa | 374 | 428 | 436 | 886 | 631 | 451 | 359 | 388 |
| | Missouri | 1,676 | 2,139 | 2,267 | 3,508 | 2,598 | 1,962 | 1,803 | 1,838 |
| | North Dakota | 9,210 | 10,821 | 10,810 | 10,071 | 10,196 | 8,180 | 8,846 | 8,785 |
| | South Dakota | 3,035 | 3,634 | 4,197 | 3,648 | 3,966 | 2,940 | 3,121 | 3,057 |
| | Nebraska | 3,373 | 3,687 | 4,010 | 5,028 | 5,041 | 3,978 | 3,207 | 3,493 |
| | Kansas | 12,699 | 13,456 | 14,294 | 17,110 | 16,945 | 13,895 | 12,531 | 13,022 |
| | Delaware | 83 | 86 | 89 | 88 | 86 | 75 | 76 | 76 |
| | Maryland | 416 | 439 | 461 | 483 | 483 | 398 | 404 | 404 |
| | Virginia | 617 | 642 | 655 | 658 | 638 | 555 | 566 | 577 |
| | West Virginia | 150 | 150 | 174 | 182 | 167 | 157 | 154 | 154 |
| | North Carolina | 509 | 525 | 560 | 524 | 492 | 443 | 465 | 498 |
| | South Carolina | 163 | 177 | 190 | 162 | 166 | 216 | 223 | 230 |
| | Georgia | 175 | 201 | 217 | 180 | 187 | 196 | 200 | 200 |
| | Kentucky | 442 | 468 | 468 | 608 | 645 | 464 | 441 | 454 |
| | Tennessee | 435 | 488 | 475 | 562 | 517 | 388 | 399 | 419 |
| | Alabama | 10 | 7 | 7 | 8 | 6 | 6 | 7 | 7 |
| | Mississippi | | | | | | | | |
| | Arkansas | 67 | 134 | 82 | 118 | 81 | 40 | 44 | 44 |
| | Oklahoma | 4,317 | 4,726 | 4,845 | 5,622 | 6,300 | 4,851 | 4,657 | 4,843 |
| | Texas | 4,549 | 4,867 | 5,062 | 5,315 | 5,368 | 3,919 | 4,233 | 4,360 |
| | Montana | 3,737 | 4,109 | 4,957 | 4,678 | 4,776 | 3,828 | 4,142 | 4,046 |
| | Idaho | 949 | 1,025 | 1,232 | 1,308 | 1,237 | 936 | 1,023 | 1,037 |
| | Wyoming | 272 | 374 | 469 | 412 | 437 | 376 | 369 | 367 |
| | Colorado | 1,666 | 1,388 | 1,728 | 1,786 | 1,774 | 1,625 | 1,524 | 1,504 |
| | New Mexico | 371 | 325 | 387 | 434 | 438 | 368 | 368 | 367 |
| | Arizona | 57 | 44 | 48 | 45 | 50 | 35 | 40 | 38 |
| | Utah | 243 | 248 | 281 | 287 | 298 | 263 | 265 | 265 |
| | Nevada | 12 | 13 | 17 | 19 | 22 | 16 | 19 | 18 |
| | Washington | 2,047 | 2,057 | 2,532 | 2,676 | 2,247 | 1,943 | 2,002 | 2,017 |
| | Oregon | 991 | 1,016 | 1,145 | 1,151 | 1,092 | 799 | 864 | 829 |
| | California | 799 | 798 | 923 | 895 | 850 | 715 | 833 | 875 |
| | United States | 63,562 | 69,207 | 73,724 | 81,072 | 79,565 | 63,516 | 62,367 | 63,503 |

¹ Preliminary.

Source: U. S. Department of Agriculture, Agricultural Marketing Service.

TABLE 4—All wheat: Harvested acreage, by States,¹ 1926 to 1940

| State | 1926 | 1927 | 1928 | 1929 | 1930 | 1931 | 1932 | 1933 |
|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres |
| Maine | 4 | 3 | 3 | 2 | 2 | 2 | 4 | 7 |
| Vermont | 2 | 2 | 1 | 1 | 1 | 1 | | |
| New York | 279 | 301 | 316 | 242 | 224 | 212 | 201 | 233 |
| New Jersey | 65 | 62 | 55 | 54 | 54 | 52 | 51 | 49 |
| Pennsylvania | 1,131 | 1,023 | 1,002 | 987 | 997 | 930 | 929 | 937 |
| Ohio | 1,730 | 1,579 | 856 | 1,564 | 1,661 | 1,861 | 1,748 | 2,089 |
| Indiana | 1,764 | 1,872 | 961 | 1,568 | 1,587 | 1,729 | 1,470 | 1,577 |
| Illinois | 2,283 | 2,458 | 1,462 | 2,093 | 2,025 | 2,101 | 1,669 | 1,874 |
| Michigan | 808 | 801 | 785 | 790 | 724 | 734 | 734 | 885 |
| Wisconsin | 122 | 134 | 97 | 96 | 99 | 88 | 110 | 104 |
| Minnesota | 1,872 | 1,786 | 1,544 | 1,421 | 1,387 | 1,224 | 1,462 | 1,629 |
| Iowa | 387 | 452 | 453 | 426 | 435 | 357 | 273 | 251 |
| Missouri | 1,408 | 1,562 | 1,521 | 1,534 | 1,336 | 1,596 | 1,404 | 1,362 |
| North Dakota | 9,083 | 10,336 | 10,832 | 10,440 | 9,896 | 6,295 | 10,639 | 10,098 |
| South Dakota | 2,306 | 3,196 | 3,648 | 3,583 | 3,682 | 2,941 | 3,854 | 1,150 |
| Nebraska | 3,146 | 3,733 | 3,757 | 3,700 | 3,974 | 3,420 | 2,277 | 2,437 |
| Kansas | 10,409 | 10,202 | 10,639 | 12,550 | 13,132 | 13,623 | 10,365 | 7,391 |
| Delaware | 106 | 101 | 105 | 106 | 105 | 91 | 83 | 83 |
| Maryland | 490 | 490 | 496 | 506 | 486 | 418 | 383 | 413 |
| Virginia | 626 | 620 | 608 | 657 | 591 | 609 | 585 | 567 |
| West Virginia | 125 | 112 | 101 | 104 | 121 | 131 | 122 | 131 |
| North Carolina | 373 | 380 | 361 | 353 | 265 | 358 | 422 | 443 |
| South Carolina | 46 | 72 | 64 | 82 | 38 | 65 | 127 | 123 |
| Georgia | 81 | 90 | 59 | 48 | 28 | 61 | 132 | 132 |
| Kentucky | 232 | 267 | 134 | 204 | 212 | 286 | 317 | 339 |
| Tennessee | 356 | 392 | 310 | 280 | 213 | 280 | 339 | 363 |
| Alabama | 3 | 4 | 2 | 2 | 2 | 4 | 7 | 5 |
| Mississippi | 2 | 3 | 1 | | | | | |
| Arkansas | 25 | 23 | 16 | 17 | 18 | 54 | 48 | 62 |
| Oklahoma | 4,332 | 3,812 | 4,613 | 4,576 | 3,935 | 4,407 | 3,966 | 3,063 |
| Texas | 2,117 | 2,180 | 2,363 | 3,042 | 3,457 | 4,386 | 3,509 | 2,105 |
| Montana | 2,580 | 4,020 | 4,395 | 4,419 | 4,217 | 2,182 | 4,021 | 3,512 |
| Idaho | 1,110 | 1,265 | 1,310 | 1,307 | 1,221 | 964 | 1,139 | 990 |
| Wyoming | 235 | 286 | 342 | 341 | 326 | 277 | 255 | 219 |
| Colorado | 1,685 | 1,958 | 1,481 | 1,539 | 1,659 | 1,420 | 704 | 583 |
| New Mexico | 242 | 60 | 239 | 348 | 264 | 476 | 267 | 246 |
| Arizona | 28 | 31 | 22 | 18 | 17 | 24 | 36 | 43 |
| Utah | 227 | 231 | 254 | 265 | 289 | 280 | 265 | 247 |
| Nevada | 17 | 18 | 16 | 14 | 13 | 14 | 18 | 14 |
| Washington | 1,988 | 2,137 | 2,223 | 2,375 | 2,338 | 2,315 | 2,308 | 2,163 |
| Oregon | 1,064 | 1,102 | 1,019 | 1,075 | 1,027 | 945 | 991 | 903 |
| California | 653 | 770 | 730 | 633 | 556 | 518 | 595 | 696 |
| United States | 56,610 | 59,628 | 59,226 | 63,332 | 62,614 | 57,681 | 57,839 | 49,438 |

¹ Data reported for some New England and Southern States which show a little wheat in 1939 Census.

TABLE 4.—All wheat: Harvested acreage, by States,¹ 1926 to 1940—Con.

| St. | State | 1934 | 1935 | 1936 | 1937 | 1938 | 1939 | 1940 ¹ |
|----------------|-------|-------------|-------------|-------------|-------------|-------------|-------------|-------------------|
| | | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres |
| | | 7 | 10 | 7 | 4 | 4 | 4 | 4 |
| Maine | | | | | | | | |
| Vermont | | | | | | | | |
| New York | | 263 | 283 | 282 | 346 | 303 | 273 | 309 |
| New Jersey | | 51 | 58 | 61 | 65 | 61 | 52 | 56 |
| Pennsylvania | | 946 | 1,004 | 1,033 | 1,073 | 1,050 | 926 | 917 |
| Ohio | | 1,994 | 2,132 | 2,127 | 2,432 | 2,381 | 1,906 | 1,960 |
| Indiana | | 1,845 | 1,906 | 1,775 | 2,171 | 1,803 | 1,534 | 1,546 |
| Illinois | | 2,080 | 2,074 | 2,082 | 2,617 | 2,259 | 1,980 | 1,782 |
| Michigan | | 855 | 874 | 823 | 1,011 | 913 | 739 | 761 |
| Wisconsin | | 104 | 139 | 106 | 131 | 120 | 90 | 86 |
| Minnesota | | 1,322 | 1,874 | 1,736 | 2,160 | 2,616 | 1,595 | 1,622 |
| Iowa | | 298 | 401 | 407 | 817 | 583 | 392 | 341 |
| Missouri | | 1,643 | 2,054 | 2,095 | 3,198 | 2,432 | 1,845 | 1,714 |
| North Dakota | | 3,430 | 7,823 | 3,689 | 7,018 | 8,512 | 7,653 | 8,293 |
| South Dakota | | 158 | 3,153 | 840 | 2,738 | 3,108 | 2,193 | 2,707 |
| Nebraska | | 2,251 | 3,070 | 3,338 | 3,601 | 4,691 | 3,199 | 2,646 |
| Kansas | | 8,610 | 6,888 | 10,464 | 13,172 | 14,497 | 9,713 | 8,857 |
| Delaware | | 80 | 84 | 86 | 86 | 83 | 72 | 74 |
| Maryland | | 408 | 428 | 449 | 476 | 471 | 377 | 388 |
| Virginia | | 605 | 629 | 629 | 648 | 609 | 530 | 546 |
| West Virginia | | 145 | 149 | 164 | 171 | 156 | 145 | 139 |
| North Carolina | | 496 | 520 | 530 | 453 | 473 | 425 | 438 |
| South Carolina | | 156 | 175 | 184 | 149 | 161 | 210 | 215 |
| Georgia | | 169 | 195 | 195 | 170 | 170 | 177 | 179 |
| Kentucky | | 403 | 443 | 421 | 552 | 580 | 354 | 375 |
| Tennessee | | 418 | 468 | 454 | 540 | 491 | 358 | 379 |
| Alabama | | 9 | 7 | 6 | 7 | 5 | 8 | 6 |
| Mississippi | | | | | | | | |
| Arkansas | | 60 | 114 | 70 | 100 | 70 | 41 | 37 |
| Oklahoma | | 3,543 | 3,308 | 3,440 | 4,610 | 5,607 | 4,317 | 3,885 |
| Texas | | 3,094 | 1,639 | 2,458 | 3,933 | 3,894 | 2,765 | 2,850 |
| Montana | | 2,481 | 3,434 | 2,239 | 2,624 | 4,288 | 3,440 | 3,932 |
| Idaho | | 885 | 978 | 1,112 | 1,153 | 1,159 | 870 | 957 |
| Wyoming | | 106 | 246 | 154 | 296 | 354 | 276 | 300 |
| Colorado | | 704 | 553 | 853 | 1,136 | 1,315 | 1,140 | 1,096 |
| New Mexico | | 129 | 187 | 146 | 299 | 263 | 284 | 211 |
| Arizona | | 54 | 44 | 48 | 45 | 30 | 35 | 39 |
| Utah | | 202 | 230 | 261 | 279 | 293 | 226 | 251 |
| Nevada | | 12 | 13 | 17 | 19 | 22 | 16 | 19 |
| Washington | | 1,934 | 1,908 | 2,164 | 2,317 | 2,265 | 1,901 | 1,978 |
| Oregon | | 835 | 878 | 1,000 | 993 | 1,068 | 756 | 850 |
| California | | 615 | 766 | 858 | 832 | 749 | 658 | 758 |
| United States | | 43,400 | 51,229 | 48,893 | 64,422 | 69,869 | 53,482 | 53,503 |

¹ Preliminary.

Source: U. S. Department of Agriculture, Agricultural Marketing Service.

62 TABLE 5.—All wheat: Yield per seeded acre, by States,¹ 1926 to 1941

| State | 1926 | 1927 | 1928 | 1929 | 1930 | 1931 | 1932 | 1933 |
|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> |
| Maine | 22.6 | 18.0 | 19.0 | 23.0 | 21.0 | 22.0 | 22.0 | 24.0 |
| Vermont | 20.0 | 20.0 | 16.0 | 18.0 | 20.0 | 21.0 | | |
| New York | 14.9 | 20.7 | 14.7 | 15.7 | 16.6 | 23.0 | 20.0 | 18.7 |
| New Jersey | 20.4 | 21.7 | 19.0 | 20.1 | 21.6 | 24.5 | 20.6 | 21.6 |
| Pennsylvania | 19.1 | 17.1 | 13.2 | 17.5 | 21.6 | 21.1 | 14.8 | 17.5 |
| Ohio | 21.8 | 17.5 | 4.3 | 18.8 | 14.9 | 28.6 | 19.8 | 17.7 |
| Indiana | 19.9 | 15.0 | 4.2 | 15.9 | 16.8 | 25.7 | 16.0 | 14.2 |
| Illinois | 18.1 | 13.2 | 6.6 | 13.6 | 16.7 | 23.2 | 15.1 | 15.9 |
| Michigan | 17.2 | 22.1 | 14.9 | 17.2 | 22.2 | 25.5 | 23.6 | 15.9 |
| Wisconsin | 17.5 | 19.8 | 15.9 | 19.2 | 20.4 | 17.0 | 18.8 | 15.0 |
| Minnesota | 12.5 | 11.7 | 12.8 | 14.9 | 17.0 | 14.7 | 14.2 | 9.7 |
| Iowa | 20.5 | 17.7 | 15.0 | 18.3 | 20.2 | 19.9 | 14.5 | 15.9 |
| Missouri | 15.1 | 8.9 | 8.9 | 9.5 | 13.5 | 19.8 | 10.4 | 12.0 |
| North Dakota | 8.2 | 12.9 | 14.1 | 9.3 | 10.7 | 4.0 | 10.1 | 6.3 |
| South Dakota | 4.8 | 14.6 | 9.9 | 9.3 | 11.1 | 5.0 | 13.2 | 1.1 |
| Nebraska | 13.6 | 18.6 | 16.2 | 13.7 | 18.4 | 15.6 | 8.4 | 8.8 |
| Kansas | 13.2 | 9.0 | 13.6 | 11.8 | 13.6 | 18.1 | 9.3 | 5.1 |
| Delaware | 19.6 | 19.8 | 17.8 | 18.8 | 19.3 | 20.4 | 11.7 | 13.4 |
| Maryland | 21.7 | 17.3 | 16.5 | 17.7 | 21.7 | 21.6 | 12.8 | 15.8 |
| Virginia | 16.3 | 12.7 | 13.6 | 12.9 | 15.3 | 21.6 | 10.6 | 13.2 |
| West Virginia | 15.9 | 12.8 | 11.5 | 12.8 | 17.4 | 18.6 | 11.4 | 14.3 |
| North Carolina | 11.3 | 9.2 | 9.8 | 10.1 | 10.3 | 12.8 | 9.4 | 9.3 |
| South Carolina | 13.7 | 7.9 | 9.3 | 9.5 | 9.5 | 11.7 | 9.2 | 7.7 |
| Georgia | 10.6 | 6.9 | 6.8 | 8.0 | 9.3 | 11.0 | 8.7 | 7.5 |
| Kentucky | 18.5 | 9.7 | 3.3 | 12.1 | 13.5 | 21.3 | 9.2 | 11.2 |
| Tennessee | 16.7 | 6.6 | 6.7 | 8.5 | 10.6 | 16.7 | 9.2 | 9.8 |
| Alabama | 11.5 | 10.5 | 11.0 | 10.0 | 10.0 | 12.5 | 10.6 | 8.0 |
| Mississippi | 12.2 | 11.8 | 6.5 | | | | | |
| Arkansas | 10.1 | 7.5 | 6.6 | 8.8 | 9.0 | 10.6 | 6.6 | 6.1 |
| Oklahoma | 16.7 | 7.4 | 13.0 | 10.5 | 8.2 | 16.2 | 10.8 | 7.1 |
| Texas | 17.7 | 7.4 | 8.3 | 13.8 | 9.7 | 14.8 | 8.3 | 3.3 |
| Montana | 11.8 | 19.9 | 17.3 | 8.7 | 7.6 | 3.5 | 12.4 | 6.6 |
| Idaho | 20.5 | 23.7 | 23.3 | 21.9 | 23.8 | 18.1 | 23.6 | 15.3 |
| Wyoming | 14.4 | 14.7 | 13.7 | 11.9 | 10.3 | 5.2 | 7.4 | 5.5 |
| Colorado | 10.0 | 9.8 | 9.3 | 9.4 | 11.4 | 10.2 | 4.4 | 4.8 |
| New Mexico | 17.6 | 2.3 | 6.5 | 11.7 | 4.9 | 19.0 | 4.2 | 3.5 |
| Arizona | 17.9 | 18.0 | 20.5 | 23.0 | 24.5 | 23.0 | 20.4 | 21.0 |
| Utah | 22.4 | 21.8 | 23.1 | 19.6 | 24.2 | 15.9 | 19.7 | 15.6 |
| Nevada | 22.9 | 24.0 | 26.8 | 25.9 | 25.4 | 22.8 | 25.8 | 24.0 |
| Washington | 18.8 | 23.8 | 20.6 | 17.6 | 14.0 | 17.6 | 18.0 | 14.4 |
| Oregon | 17.6 | 24.8 | 22.2 | 19.5 | 22.1 | 17.9 | 19.6 | 11.5 |
| California | 16.7 | 16.0 | 18.7 | 13.9 | 15.8 | 10.9 | 16.6 | 16.5 |
| United States | 13.7 | 13.3 | 12.9 | 12.3 | 13.2 | 14.3 | 11.5 | 8.1 |

¹No data reported for some New England and Southern States which show a little wheat in 1939 Census.

TABLE 5.—All wheat: Yield per seeded acre, by States,¹ 1926 to 1941—Con.

| 53 | State | 1934 | 1935 | 1936 | 1937 | 1938 | 1939 | 1940 ² | 1941 ² |
|----|----------------|----------------|----------------|----------------|----------------|----------------|----------------|-------------------|-------------------|
| | | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> | <i>Bushels</i> |
| | Maine | 21.5 | 17.0 | 17.0 | 19.0 | 17.0 | 21.0 | 22.0 | 20.0 |
| | Vermont | | | | | | | | |
| | New York | 16.5 | 21.7 | 19.8 | 23.2 | 24.2 | 23.0 | 25.1 | 20.7 |
| | New Jersey | 20.7 | 22.6 | 18.6 | 19.2 | 18.6 | 16.7 | 18.3 | 16.4 |
| | Pennsylvania | 15.7 | 20.6 | 18.6 | 21.5 | 20.4 | 20.4 | 19.9 | 19.4 |
| | Ohio | 17.8 | 21.8 | 17.4 | 18.1 | 19.2 | 18.2 | 21.3 | 24.6 |
| | Indiana | 16.9 | 15.2 | 16.4 | 15.0 | 15.0 | 17.0 | 19.1 | 23.3 |
| | Illinois | 16.7 | 14.1 | 16.1 | 16.1 | 17.9 | 20.0 | 22.3 | 20.1 |
| | Michigan | 13.5 | 21.5 | 19.8 | 17.8 | 21.1 | 20.6 | 23.2 | 21.7 |
| | Wisconsin | 11.9 | 16.2 | 13.4 | 15.1 | 16.3 | 14.5 | 19.8 | 17.2 |
| | Minnesota | 8.6 | 9.4 | 9.0 | 16.2 | 14.8 | 13.7 | 19.7 | 14.6 |
| | Iowa | 9.7 | 14.8 | 19.3 | 16.5 | 14.7 | 15.3 | 22.6 | 8.3 |
| | Missouri | 14.8 | 12.0 | 13.9 | 12.1 | 12.2 | 15.5 | 17.6 | 9.6 |
| | North Dakota | 2.3 | 5.1 | 1.8 | 5.7 | 7.5 | 9.7 | 11.0 | 15.2 |
| | South Dakota | 2 | 7.0 | 1.0 | 4.2 | 7.2 | 6.5 | 8.4 | 12.1 |
| | Nebraska | 5.2 | 10.5 | 11.8 | 9.4 | 11.1 | 9.1 | 10.9 | 10.1 |
| | Kansas | 6.6 | 4.8 | 8.4 | 9.2 | 9.0 | 8.0 | 9.9 | 13.1 |
| | Delaware | 17.4 | 18.6 | 15.9 | 15.6 | 19.3 | 17.3 | 18.5 | 19.5 |
| | Maryland | 18.3 | 20.0 | 19.5 | 18.7 | 19 | 18.6 | 18.7 | 19.8 |
| | Virginia | 12.8 | 12.7 | 12.0 | 14.8 | 13.4 | 13.8 | 15.0 | 13.8 |
| | West Virginia | 12.4 | 15.9 | 12.7 | 15.0 | 14.0 | 13.4 | 13.1 | 13.2 |
| | North Carolina | 9.6 | 11.2 | 9.3 | 11.1 | 11.1 | 11.5 | 13.2 | 13.2 |
| | South Carolina | 8.6 | 9.9 | 7.7 | 8.7 | 10.7 | 11.2 | 12.1 | 12.6 |
| | Georgia | 8.2 | 7.8 | 7.2 | 7.6 | 9.1 | 9.0 | 9.4 | 10.1 |
| | Kentucky | 11.9 | 9.5 | 12.6 | 16.8 | 13.5 | 8.8 | 12.8 | 15.9 |
| | Tennessee | 9.8 | 9.1 | 10.2 | 12.0 | 10.4 | 10.6 | 12.8 | 13.0 |
| | Alabama | 7.2 | 10.0 | 7.7 | 9.6 | 10.8 | 10.0 | 10.7 | 13.0 |
| | Mississippi | | | | | | | | |
| | Arkansas | 7.2 | 6.8 | 7.3 | 8.9 | 7.3 | 8.0 | 8.0 | 7.5 |
| | Oklahoma | 8.6 | 7.0 | 5.7 | 11.6 | 9.8 | 12.5 | 12.1 | 10.4 |
| | Texas | 5.8 | 3.4 | 3.7 | 7.8 | 6 | 7.4 | 6.9 | 8.1 |
| | Montana | 7.4 | 8.9 | 2.8 | 4.7 | 14.6 | 13.4 | 13.5 | 18.1 |
| | Idaho | 21.0 | 21.2 | 18.5 | 21.7 | 26.1 | 22.8 | 23.8 | 26.7 |
| | Wyoming | 3.9 | 7.1 | 3.2 | 7.4 | 10.3 | 7.5 | 9.2 | 14.6 |
| | Colorado | 3.7 | 4.7 | 6.2 | 8.5 | 10.7 | 8.0 | 8.9 | 14.7 |
| | New Mexico | 2.2 | 4.5 | 2.6 | 7.2 | 6.2 | 10.3 | 4.7 | 5.2 |
| | Arizona | 20.4 | 22.5 | 23.0 | 22.0 | 22.0 | 23.0 | 20.5 | 12.2 |
| | Utah | 14.5 | 21.1 | 16.5 | 19.0 | 22.5 | 15.2 | 18.3 | 23.5 |
| | Nevada | 25.5 | 23.8 | 21.2 | 25.5 | 25.7 | 25.8 | 25.4 | 26.6 |
| | Washington | 18.2 | 21.9 | 18.4 | 19.0 | 24.3 | 22.6 | 20.9 | 29.4 |
| | Oregon | 12.7 | 15.3 | 17.8 | 17.7 | 21.5 | 20.2 | 19.9 | 27.1 |
| | California | 12.3 | 18.2 | 18.1 | 20.0 | 15.0 | 17.0 | 13.6 | 13.0 |
| | United States | 8.3 | 9.1 | 8.5 | 10.8 | 11.7 | 11.8 | 13.1 | 15.0 |

¹ Preliminary.

Source: U. S. Department of Agriculture, Agricultural Marketing Service.

64 TABLE 6.—All wheat: Production, by States,¹ 1926 to 1941

| State | 1926 | 1927 | 1928 | 1929 | 1930 | 1931 | 1932 | 1933 |
|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels |
| Maine | 88 | 54 | 57 | 46 | 42 | 44 | 88 | 168 |
| Vermont | 40 | 40 | 16 | 18 | 20 | 21 | | |
| New York | 4,486 | 6,297 | 4,923 | 3,872 | 4,022 | 5,330 | 4,086 | 4,512 |
| New Jersey | 1,365 | 1,364 | 1,100 | 1,107 | 1,188 | 1,300 | 1,071 | 1,078 |
| Pennsylvania | 22,048 | 17,886 | 14,524 | 17,473 | 21,923 | 20,417 | 13,929 | 16,833 |
| Ohio | 38,937 | 28,422 | 9,984 | 30,503 | 29,065 | 53,825 | 34,911 | 37,586 |
| Indiana | 36,147 | 29,020 | 10,129 | 25,916 | 28,584 | 44,802 | 24,251 | 23,641 |
| Illinois | 43,047 | 34,001 | 23,264 | 30,831 | 30,891 | 48,945 | 25,983 | 30,746 |
| Michigan | 16,508 | 17,201 | 12,959 | 13,760 | 16,575 | 18,965 | 17,484 | 14,528 |
| Wisconsin | 2,259 | 2,696 | 1,800 | 1,896 | 2,093 | 1,532 | 2,109 | 1,616 |
| Minnesota | 23,589 | 20,976 | 21,634 | 21,224 | 23,776 | 18,011 | 20,839 | 16,665 |
| Iowa | 8,222 | 8,180 | 8,709 | 8,000 | 8,919 | 7,321 | 4,350 | 4,303 |
| Missouri | 22,528 | 15,628 | 19,745 | 15,250 | 19,342 | 31,913 | 16,143 | 17,019 |
| North Dakota | 77,733 | 133,537 | 155,482 | 99,950 | 107,328 | 41,942 | 110,306 | 71,314 |
| South Dakota | 13,894 | 47,589 | 37,895 | 34,799 | 42,871 | 17,619 | 51,839 | 4,994 |
| Nebraska | 41,290 | 72,188 | 67,446 | 55,403 | 74,848 | 56,943 | 27,958 | 29,208 |
| Kansas | 153,991 | 114,216 | 173,185 | 155,563 | 186,277 | 251,885 | 120,178 | 66,931 |
| Delaware | 2,120 | 2,020 | 1,890 | 2,014 | 2,048 | 1,956 | 906 | 1,162 |
| Maryland | 10,780 | 8,575 | 8,432 | 9,108 | 10,692 | 9,514 | 5,306 | 6,608 |
| Virginia | 10,230 | 8,060 | 8,816 | 8,607 | 9,160 | 13,398 | 6,318 | 7,654 |
| West Virginia | 2,000 | 1,456 | 1,364 | 1,362 | 2,118 | 2,489 | 1,403 | 1,900 |
| North Carolina | 4,260 | 3,610 | 3,790 | 3,636 | 2,862 | 4,654 | 4,009 | 4,208 |
| South Carolina | 644 | 612 | 567 | 520 | 380 | 845 | 1,206 | 984 |
| Georgia | 891 | 675 | 472 | 408 | 520 | 702 | 1,188 | 1,056 |
| Kentucky | 4,408 | 2,670 | 1,273 | 2,530 | 2,968 | 6,292 | 3,328 | 4,068 |
| Tennessee | 6,052 | 2,744 | 2,883 | 2,492 | 2,343 | 4,930 | 3,220 | 3,703 |
| Alabama | 34 | 42 | 22 | 20 | 20 | 50 | 70 | 40 |
| Mississippi | 24 | 35 | 13 | | | | | |
| Arkansas | 262 | 218 | 152 | 158 | 180 | 648 | 384 | 536 |
| Oklahoma | 73,644 | 35,070 | 64,382 | 51,251 | 37,382 | 74,919 | 47,592 | 31,519 |
| Texas | 38,529 | 21,146 | 25,844 | 45,022 | 38,373 | 67,983 | 29,826 | 14,946 |
| Montana | 44,775 | 81,713 | 79,146 | 41,290 | 35,313 | 14,478 | 55,571 | 28,810 |
| Idaho | 23,415 | 30,537 | 31,333 | 29,125 | 29,802 | 17,900 | 27,980 | 16,420 |
| Wyoming | 3,522 | 4,530 | 5,063 | 4,394 | 3,808 | 2,032 | 2,862 | 2,046 |
| Colorado | 20,860 | 22,269 | 20,797 | 17,934 | 23,058 | 17,040 | 7,447 | 6,350 |
| New Mexico | 4,372 | 610 | 2,432 | 4,942 | 2,262 | 9,400 | 1,934 | 1,496 |
| Arizona | 518 | 558 | 451 | 414 | 416 | 552 | 756 | 924 |
| Utah | 5,152 | 5,156 | 5,950 | 5,304 | 7,178 | 4,613 | 5,417 | 4,015 |
| Nevada | 390 | 432 | 428 | 362 | 330 | 319 | 465 | 336 |
| Washington | 38,035 | 52,660 | 47,674 | 44,199 | 37,548 | 41,609 | 42,868 | 43,638 |
| Oregon | 19,222 | 27,541 | 23,182 | 21,530 | 23,621 | 17,662 | 20,060 | 17,608 |
| California | 11,754 | 12,705 | 14,965 | 11,014 | 10,564 | 7,563 | 11,126 | 12,870 |
| United States | 832,213 | 875,059 | 914,373 | 823,217 | 886,470 | 941,674 | 756,927 | 551,083 |

¹ No data reported for some New England and Southern States which show a little wheat in 1939 Census.

TABLE 6.—All-wheat: Production, by States, 1926 to 1941—Continued

| 65 | State | 1934 | 1935 | 1936 | 1937 | 1938 | 1939 | 1940 | 1941 |
|----|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| | | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels |
| | | 150 | 170 | 119 | 76 | 68 | 84 | 88 | 80 |
| | Maine | | | | | | | | |
| | Vermont | 4,714 | 6,437 | 5,743 | 8,276 | 7,533 | 6,382 | 7,996 | 6,590 |
| | New York | 1,096 | 1,334 | 1,281 | 1,462 | 1,342 | 1,170 | 1,316 | 1,232 |
| | New Jersey | 15,499 | 21,045 | 19,615 | 23,573 | 22,032 | 19,421 | 18,789 | 18,330 |
| | Pennsylvania | 36,467 | 46,892 | 40,278 | 46,136 | 46,420 | 37,150 | 42,137 | 49,722 |
| | Ohio | 31,891 | 29,534 | 31,042 | 34,718 | 28,848 | 27,612 | 30,147 | 37,344 |
| | Indiana | 36,522 | 30,060 | 36,435 | 45,068 | 41,792 | 41,472 | 40,155 | 37,843 |
| | Illinois | 12,126 | 19,168 | 16,702 | 18,658 | 19,519 | 15,784 | 17,812 | 16,358 |
| | Michigan | 1,475 | 2,254 | 1,469 | 2,043 | 2,007 | 1,350 | 1,743 | 1,534 |
| | Wisconsin | 14,165 | 19,676 | 17,137 | 35,784 | 38,948 | 22,108 | 32,069 | 23,255 |
| | Minnesota | 3,632 | 6,318 | 8,407 | 14,649 | 9,284 | 6,902 | 8,121 | 3,235 |
| | Iowa | 24,776 | 25,648 | 31,407 | 42,515 | 31,000 | 30,429 | 31,707 | 17,589 |
| | Missouri | 20,908 | 54,714 | 19,235 | 57,005 | 76,384 | 79,068 | 97,054 | 133,696 |
| | North Dakota | 732 | 25,481 | 4,286 | 15,381 | 28,377 | 18,990 | 26,221 | 37,052 |
| | South Dakota | 17,543 | 38,675 | 47,339 | 47,184 | 55,714 | 36,376 | 34,821 | 35,330 |
| | Nebraska | 84,323 | 64,055 | 120,270 | 158,052 | 152,184 | 111,657 | 123,848 | 170,849 |
| | Kansas | 1,448 | 1,596 | 1,419 | 1,376 | 1,660 | 1,296 | 1,406 | 1,480 |
| | Delaware | 7,630 | 8,774 | 8,980 | 9,044 | 9,420 | 7,352 | 7,506 | 7,980 |
| | Maryland | 7,926 | 8,177 | 7,862 | 9,720 | 8,526 | 7,685 | 8,463 | 7,950 |
| | Virginia | 1,856 | 2,384 | 2,214 | 2,736 | 2,340 | 2,102 | 2,016 | 2,030 |
| | West Virginia | 4,910 | 5,876 | 5,194 | 5,817 | 5,440 | 5,100 | 6,132 | 6,594 |
| | North Carolina | 1,404 | 1,730 | 1,472 | 1,416 | 1,771 | 2,415 | 2,688 | 2,900 |
| | South Carolina | 1,436 | 1,560 | 1,560 | 1,445 | 1,700 | 1,770 | 1,880 | 2,024 |
| | Georgia | 5,239 | 4,430 | 5,894 | 10,212 | 8,700 | 4,071 | 5,625 | 7,215 |
| | Kentucky | 4,264 | 4,446 | 4,858 | 6,750 | 5,401 | 4,117 | 5,116 | 5,438 |
| | Tennessee | 72 | 70 | 54 | 77 | 65 | 60 | 75 | 91 |
| | Alabama | | | | | | | | |
| | Mississippi | | | | | | | | |
| | Arkansas | 480 | 912 | 595 | 1,050 | 595 | 390 | 352 | 332 |
| | Oklahoma | 37,202 | 33,080 | 27,520 | 65,462 | 61,677 | 60,438 | 56,332 | 50,353 |
| | Texas | 26,290 | 11,473 | 18,927 | 41,690 | 35,046 | 29,032 | 29,355 | 35,420 |
| | Montana | 27,624 | 36,365 | 13,656 | 21,918 | 69,522 | 51,473 | 56,070 | 73,184 |
| | Idaho | 19,921 | 21,733 | 22,764 | 28,390 | 32,332 | 21,311 | 24,383 | 27,724 |
| | Wyoming | 1,050 | 2,647 | 1,511 | 3,060 | 4,515 | 2,812 | 3,410 | 5,363 |
| | Colorado | 6,192 | 6,532 | 10,691 | 15,155 | 19,098 | 12,965 | 13,590 | 22,180 |
| | New Mexico | 833 | 1,463 | 1,023 | 3,139 | 2,718 | 3,782 | 1,720 | 2,273 |
| | Arizona | 1,161 | 990 | 1,104 | 990 | 1,100 | 805 | 819 | 465 |
| | Utah | 3,513 | 5,222 | 4,639 | 5,459 | 6,713 | 3,989 | 4,861 | 6,227 |
| | Nevada | 306 | 339 | 361 | 484 | 522 | 412 | 483 | 478 |
| | Washington | 37,158 | 45,050 | 46,632 | 50,824 | 54,590 | 43,822 | 41,808 | 50,360 |
| | Oregon | 12,840 | 15,303 | 20,340 | 20,424 | 23,496 | 16,108 | 17,184 | 22,438 |
| | California | 9,840 | 14,554 | 16,731 | 17,888 | 12,733 | 12,173 | 11,370 | 11,415 |
| | United States | 526,393 | 626,344 | 626,766 | 875,676 | 931,702 | 751,435 | 816,098 | 950,953 |

* Preliminary.

Source: U. S. Department of Agriculture, Agricultural Marketing Service.

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66 TABLE 7.—All wheat: Farm value of production, by States, 1926 to 1940

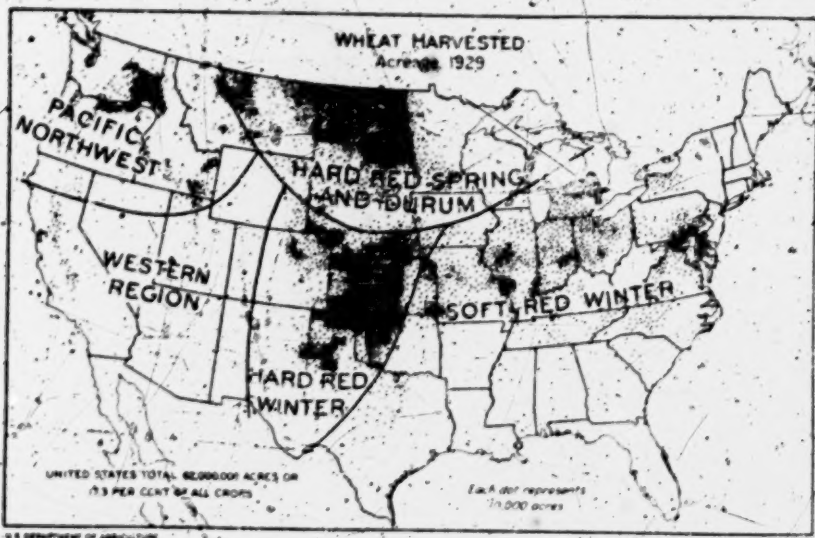
| State | 1926 | 1927 | 1928 | 1929 | 1930 | 1931 | 1932 | 1933 |
|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| | 1,000 dollars | 1,000 dollars | 1,000 dollars | 1,000 dollars | 1,000 dollars | 1,000 dollars | 1,000 dollars | 1,000 dollars |
| Maine | 163 | 89 | 94 | 74 | 55 | 34 | 60 | 215 |
| Vermont | 69 | 62 | 25 | 24 | 22 | 15 | | |
| New York | 5,966 | 8,312 | 6,548 | 4,768 | 3,348 | 3,002 | 2,375 | 3,974 |
| New Jersey | 1,829 | 1,828 | 1,408 | 1,384 | 1,022 | 793 | 632 | 1,003 |
| Pennsylvania | 28,442 | 23,967 | 19,026 | 20,622 | 18,646 | 11,458 | 7,944 | 14,646 |
| Ohio | 49,061 | 37,233 | 13,079 | 34,773 | 22,686 | 24,221 | 16,409 | 33,074 |
| Indiana | 44,822 | 37,146 | 12,894 | 28,507 | 21,145 | 17,914 | 10,419 | 20,481 |
| Illinois | 53,809 | 44,318 | 27,684 | 34,509 | 27,698 | 19,641 | 10,932 | 26,124 |
| Michigan | 20,084 | 21,845 | 16,328 | 15,419 | 12,434 | 8,737 | 7,877 | 11,622 |
| Wisconsin | 2,860 | 3,262 | 1,962 | 2,114 | 1,568 | 8,873 | 1,110 | 1,316 |
| Minnesota | 30,666 | 25,381 | 20,885 | 23,038 | 15,662 | 9,195 | 9,069 | 12,765 |
| Iowa | 10,113 | 10,143 | 8,883 | 8,552 | 6,340 | 2,943 | 1,653 | 3,356 |
| Missouri | 28,160 | 20,160 | 24,681 | 17,978 | 14,493 | 12,767 | 6,618 | 13,957 |
| North Dakota | 98,721 | 149,561 | 135,269 | 100,345 | 64,249 | 18,865 | 40,044 | 50,176 |
| South Dakota | 17,229 | 54,251 | 33,727 | 34,775 | 24,051 | 7,674 | 17,571 | 26,759 |
| Nebraska | 48,722 | 83,738 | 63,399 | 54,821 | 43,985 | 19,300 | 10,005 | 20,806 |
| Kansas | 184,789 | 141,628 | 171,453 | 153,997 | 117,349 | 83,121 | 36,658 | 47,520 |
| Delaware | 2,892 | 2,727 | 2,400 | 2,336 | 1,577 | 978 | 658 | 1,046 |
| Maryland | 13,906 | 11,319 | 10,624 | 10,474 | 8,554 | 4,807 | 2,812 | 6,033 |
| Virginia | 13,810 | 11,365 | 11,990 | 10,501 | 8,519 | 7,503 | 3,664 | 7,118 |
| West Virginia | 2,790 | 2,067 | 1,809 | 1,743 | 2,033 | 1,518 | 842 | 1,991 |
| North Carolina | 6,135 | 5,234 | 5,909 | 4,981 | 3,062 | 3,304 | 2,766 | 4,334 |
| South Carolina | 962 | 900 | 873 | 735 | 452 | 659 | 784 | 1,013 |
| Georgia | 1,354 | 969 | 796 | 604 | 356 | 790 | 796 | 1,119 |
| Kentucky | 5,951 | 3,738 | 1,922 | 3,112 | 2,612 | 3,063 | 1,597 | 3,783 |
| Tennessee | 8,412 | 3,979 | 4,469 | 3,215 | 2,366 | 3,067 | 1,932 | 3,592 |
| Alabama | 47 | 58 | 36 | 28 | 24 | 32 | 46 | 38 |
| Mississippi | 34 | 49 | 21 | | | | | |
| Arkansas | 330 | 279 | 181 | 188 | 166 | 318 | 173 | 280 |
| Oklahoma | 85,427 | 43,838 | 67,165 | 49,201 | 25,431 | 24,723 | 15,229 | 21,453 |
| Texas | 44,408 | 36,644 | 29,979 | 42,321 | 28,012 | 24,471 | 9,843 | 11,000 |
| Montana | 54,175 | 96,616 | 64,906 | 40,425 | 20,226 | 7,254 | 19,472 | 16,742 |
| Idaho | 25,054 | 32,369 | 28,826 | 28,826 | 18,018 | 5,086 | 8,538 | 8,976 |
| Wyoming | 7,769 | 4,621 | 4,354 | 4,148 | 2,075 | 882 | 898 | 1,269 |
| Colorado | 22,561 | 24,306 | 17,677 | 17,396 | 14,156 | 5,550 | 2,737 | 4,112 |
| New Mexico | 4,897 | 750 | 2,724 | 4,903 | 1,770 | 3,167 | 686 | 1,084 |
| Arizona | 710 | 731 | 609 | 546 | 483 | 408 | 416 | 739 |
| Utah | 5,616 | 5,981 | 5,950 | 5,357 | 4,797 | 2,403 | 2,211 | 2,643 |
| Nevada | 406 | 544 | 514 | 471 | 323 | 242 | 279 | 261 |
| Washington | 43,262 | 61,086 | 49,104 | 49,990 | 27,863 | 15,473 | 16,270 | 26,105 |
| Oregon | 23,259 | 32,223 | 24,109 | 23,743 | 17,480 | 6,125 | 8,325 | 11,345 |
| California | 15,280 | 16,135 | 18,407 | 12,886 | 9,825 | 4,387 | 5,897 | 10,043 |
| United States | 1,972,831 | 1,041,512 | 912,496 | 852,928 | 594,892 | 367,636 | 289,156 | 410,261 |

TABLE 7.—All wheat: Farm value of production, by States, 1926 to 1940—Con.

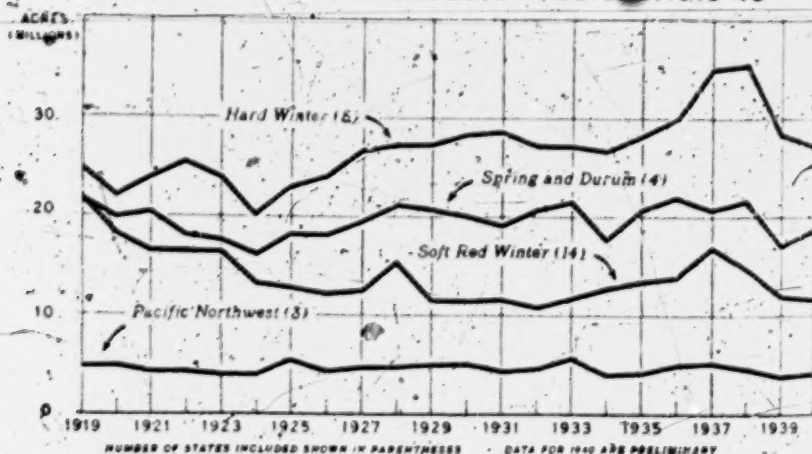
| State | 1924 | 1925 | 1926 | 1927 | 1928 | 1929 | 1940 |
|----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
| | 1,000 dollars | 1,000 dollars | 1,000 dollars | 1,000 dollars | 1,000 dollars | 1,000 dollars | 1,000 dollars |
| Maine | 219 | 228 | 178 | 108 | 80 | 103 | 109 |
| Vermont | 4,530 | 5,300 | 6,202 | 8,193 | 4,896 | 5,233 | 6,237 |
| New York | 1,063 | 1,121 | 1,396 | 1,535 | 953 | 971 | 1,105 |
| Pennsylvania | 14,264 | 17,678 | 21,380 | 22,866 | 14,321 | 15,925 | 15,219 |
| Ohio | 32,455 | 37,515 | 42,292 | 46,597 | 28,780 | 27,120 | 31,903 |
| Indiana | 27,426 | 23,626 | 31,663 | 35,065 | 17,020 | 18,776 | 21,706 |
| Illinois | 31,054 | 25,258 | 37,164 | 47,038 | 25,493 | 29,030 | 28,108 |
| Michigan | 10,673 | 15,099 | 17,871 | 17,725 | 11,516 | 11,966 | 13,537 |
| Wisconsin | 1,429 | 2,114 | 1,763 | 2,023 | 1,325 | 1,080 | 1,307 |
| Minnesota | 14,044 | 19,316 | 20,907 | 37,573 | 23,369 | 16,139 | 22,448 |
| Iowa | 3,196 | 5,370 | 8,827 | 14,942 | 5,385 | 4,555 | 5,441 |
| Missouri | 26,815 | 21,546 | 32,977 | 40,389 | 18,012 | 20,083 | 21,561 |
| North Dakota | 20,404 | 43,411 | 22,505 | 54,155 | 40,484 | 55,348 | 65,026 |
| South Dakota | 10,675 | 23,154 | 4,972 | 14,766 | 15,224 | 13,293 | 17,306 |
| Nebraska | 14,710 | 32,721 | 49,706 | 46,240 | 30,086 | 24,372 | 22,634 |
| Kansas | 70,827 | 57,008 | 120,270 | 139,633 | 86,745 | 73,694 | 78,024 |
| Delaware | 1,318 | 1,325 | 1,504 | 1,376 | 1,046 | 1,011 | 1,111 |
| Maryland | 6,867 | 6,756 | 9,519 | 9,225 | 5,935 | 5,735 | 5,826 |
| Virginia | 7,609 | 7,196 | 8,963 | 10,303 | 6,139 | 6,763 | 7,278 |
| West Virginia | 1,782 | 2,146 | 2,413 | 2,873 | 1,732 | 1,829 | 1,774 |
| North Carolina | 5,205 | 5,876 | 6,025 | 6,748 | 4,461 | 4,641 | 5,703 |
| South Carolina | 1,572 | 1,115 | 1,487 | 1,657 | 1,435 | 2,053 | 2,365 |
| Georgia | 1,698 | 1,591 | 1,622 | 1,748 | 1,428 | 1,504 | 1,711 |
| Kentucky | 4,963 | 3,810 | 6,071 | 10,825 | 8,568 | 3,013 | 4,388 |
| Tennessee | 4,179 | 4,179 | 5,635 | 7,222 | 3,997 | 3,499 | 4,349 |
| Alabama | 77 | 67 | 58 | 62 | 55 | 52 | 70 |
| Mississippi | 461 | 769 | 697 | 1,090 | 381 | 265 | 253 |
| Arkansas | 30,134 | 28,449 | 27,245 | 62,844 | 34,539 | 39,285 | 34,363 |
| Oklahoma | 20,513 | 9,637 | 18,927 | 40,022 | 19,976 | 22,064 | 18,787 |
| Texas | 25,705 | 33,499 | 16,660 | 21,480 | 32,673 | 31,913 | 33,081 |
| Montana | 13,758 | 15,118 | 20,260 | 20,136 | 14,549 | 12,787 | 13,411 |
| Idaho | 915 | 2,343 | 1,677 | 2,785 | 2,167 | 1,772 | 2,012 |
| Wyoming | 5,218 | 5,885 | 10,691 | 13,791 | 9,343 | 8,298 | 8,000 |
| Colorado | 760 | 1,209 | 1,003 | 3,202 | 1,576 | 2,723 | 1,084 |
| New Mexico | 952 | 812 | 983 | 990 | 814 | 620 | 663 |
| Arizona | 2,928 | 4,104 | 4,778 | 4,313 | 3,222 | 2,633 | 2,898 |
| Utah | 290 | 292 | 357 | 965 | 334 | 301 | 377 |
| Nevada | 27,043 | 31,535 | 42,435 | 38,118 | 26,749 | 28,484 | 24,667 |
| Washington | 9,292 | 11,162 | 18,306 | 15,726 | 12,453 | 11,437 | 10,826 |
| Oregon | 7,774 | 11,352 | 15,560 | 16,994 | 8,276 | 9,251 | 8,755 |
| California | | | | | | | |
| United States | 446,367 | 521,315 | 642,859 | 842,843 | 522,639 | 519,651 | 545,993 |

Preliminary.

Source: U. S. Department of Agriculture, Agricultural Marketing Service.



WHEAT: U. S. ACREAGE SEEDED, BY REGION, 1919-40



U. S. DEPARTMENT OF AGRICULTURE

REV. 7-101

BUREAU OF AGRICULTURAL ECONOMICS

All wheat areas shared in the acreage decline in 1939. The acreages of hard winter and soft winter wheat declined still further in 1940, at a time when a small increase took place in the Pacific Northwest and a moderate increase in the spring wheat region. Compared with the 5-year period 1929-33, when acreage was fairly stable, the preliminary estimate of the acreage seeded for harvest in 1940 is one percent above for the soft red winter

wheat region, 2 percent below for the hard winter wheat region, 9 percent below for the spring wheat region, and 16 percent below for Pacific Northwest. For the country as a whole, the estimated acreage is 4 percent below the 5-year average.

TABLE 8.—Wheat : Acreage seeded, by regions, United States, average 1929-32, annual 1919-40

| Year | Hard winter wheat region ¹ | Spring wheat region ² | Soft red winter wheat region ³ | Pacific Northwest region ⁴ |
|-----------------|---------------------------------------|----------------------------------|---|---------------------------------------|
| | 1,000 acres | 1,000 acres | 1,000 acres | 1,000 acres |
| Average 1929-33 | 27,629 | 20,386 | 11,348 | 4,904 |
| 1919 | 24,727 | 21,706 | 21,726 | 4,774 |
| 1920 | 22,066 | 19,905 | 36,192 | 4,817 |
| 1921 | 23,830 | 20,426 | 16,429 | 4,288 |
| 1922 | 25,478 | 18,065 | 16,448 | 4,268 |
| 1923 | 23,830 | 17,523 | 16,392 | 3,974 |
| 1924 | 20,177 | 16,006 | 13,223 | 3,958 |
| 1925 | 22,893 | 18,295 | 12,758 | 5,436 |
| 1926 | 23,935 | 18,056 | 12,229 | 4,250 |
| 1927 | 20,537 | 19,487 | 12,498 | 4,612 |
| 1928 | 27,204 | 21,130 | 15,769 | 4,999 |
| 1929 | 27,228 | 20,650 | 11,421 | 4,940 |
| 1930 | 28,321 | 19,955 | 11,350 | 5,010 |
| 1931 | 28,429 | 19,072 | 11,526 | 4,347 |
| 1932 | 27,162 | 20,777 | 10,790 | 4,595 |
| 1933 | 27,064 | 21,476 | 11,652 | 5,628 |
| 1934 | 29,604 | 17,626 | 12,618 | 3,987 |
| 1935 | 28,124 | 20,648 | 13,380 | 4,096 |
| 1936 | 29,909 | 21,894 | 13,799 | 4,906 |
| 1937 | 34,861 | 20,603 | 16,806 | 5,132 |
| 1938 | 33,428 | 21,576 | 14,620 | 4,576 |
| 1939 | 28,306 | 17,034 | 11,965 | 3,741 |
| 1940 | 27,168 | 18,500 | 11,616 | 4,107 |

¹ Nebr., Kans., Okla., Tex., and Colo.

² Minn., N. Dak., S. Dak., and Mont.

³ N. Y., Pa., Ohio, Ind., Ill., Mich., Mo., Del., Md., Va., W. Va., N. C., Ky., and Tenn.

⁴ Idaho, Wash., and Oreg.

⁵ Preliminary.

II.

INTERSTATE COMMERCE AND INTERNATIONAL TRADE IN WHEAT

Wheat leads all other grains in receipts at leading primary markets, in commercial stocks in store, in exports, and in volume of futures trading. While corn is the most important grain grown in the United States judged by production or farm value, it is fed largely on farms and for this reason it does not, as grain, have the importance of wheat in grain markets and interstate commerce.

From the time wheat leaves the producer it usually cannot be traced as an individual shipment into the principal market channels. Most farmers in the United States market their wheat to local country elevators, although in some areas, a substantial amount of wheat is sold to trucker-buyers. Some wheat is con-

signed to terminals and in some areas small amounts of wheat are sold through local feed stores. Farmers usually retain sufficient wheat for feed for their poultry and livestock and for seed if the quality is satisfactory; and in certain areas the farmers' own wheat is ground for household use. This diversified disposition of the farm production of wheat and the various methods of marketing make it difficult accurately to account for the actual amount, as well as the final disposition, of an individual farmer's wheat production.

There are over 30,000 local elevators, some operated by local independent grain dealers, some by farmers' cooperative associations, and others by large grain firms with headquarters in cities having terminal markets. These country elevators have a small amount of storage capacity and, consequently, must handle the grain as rapidly as possible with shipment to mills or terminal elevators scattered throughout the country near large mills and wheat exporting ports. It has been estimated that considerably over a million grain cars are used for this purpose during each year. The vastness and complexity of wheat transportation is partially indicated by Map 5 which shows freight rates on wheat in effect in November 1936. This map was prepared by the Corps of Engineers, U. S. Army, and gives rates from some of the interior shipping points to primary markets, lake and ocean ports.

After buying the wheat from the farmer, the operator of the country elevator usually sells it as soon as possible to elevators or mills, or consigns it to a commission merchant, who sells the wheat for his account, usually through a Board of Trade. There are large terminal markets in numerous cities as indicated on Map 6, which also shows grain storage capacity in these markets. A similar presentation of the wheat flour milling capacity, by States, is given by Map 7. Table 9 shows, by calendar years from 1932 to 1940, receipts and shipments of wheat and wheat flour at leading United States distribution centers. More than half of the receipts of wheat are at Buffalo, Minneapolis, Duluth-Superior, and Kansas City, and less than half are at the other 18 or 19 leading centers. Map 8 shows the amount and origin of wheat received at upper Great Lakes ports in 1935. Wheat received at these ports was shipped from 20 States and 3 Canadian Provinces. The movement of wheat on the Great Lakes to Buffalo and other points is illustrated by Chart 3 which was also prepared by the Corps of Engineers, U. S. Army. Maps 5 and 8 and Chart 3 are used to indicate parts of the movement of wheat in the United States.

In connection with the abnormally large supply of wheat and other grains for the 1941-42 marketing year, congestion has occurred in a number of markets, necessitating steps which have interrupted the regular flow of grain to those points. For example, at Enid, Oklahoma, on August 4, 1941, 93 percent of the rated capacity of its elevators was occupied, and at Kansas City 92 percent of the space was full. In Indiana and Ohio most of the sub-terminal elevators were so full that they were turning away grain. At Duluth-Superior, serving an area where the harvest movement is later, 91 percent of the rated capacity was full on August 4.

Because of the tight storage situation at a number of markets, partial embargoes have been instituted to prevent further congestion and the tying up of railroad cars vitally needed in the defense effort. The Car Service Division of the Association of American Railroads has placed partial embargoes on the following markets as of August 8, 1941: Kansas City, Missouri and Kansas; Salina, Kansas; Cincinnati, Ohio; St. Louis, Missouri, and East St. Louis, Illinois; Minneapolis and St. Paul, Minnesota; Duluth, Minnesota; Superior and Itasca, Wisconsin; Louisville, Kentucky; and all Puget Sound and Columbia River markets. In addition, certain railroads have placed embargoes on individual elevators at other markets. Under most of the embargoes in force "free" grain which is to be offered for sale can move to market without restriction. Grain for storage is accepted for shipment to the specified markets only on a definite showing that storage space is available and assurance that the railroad cars will be unloaded on arrival.

Approximately 500 million bushels of wheat are ground each year in the United States by about 4,000 mills. The flour reaches the consumer as the product of about 35,000 bakeries, or through about 350,000 retail grocery stores. The markets for flour have become highly specialized, and to meet the demands of the trade, millers manufacture a great many different kinds and types of flour, each variation of quality being made to meet the requirements of a particular branch of the trade and for the manufacture of particular products. Because of the development of such specialized flour requirements, commercial millers must have access to and must purchase wheat of the various classes and physical qualities to enable them to cater to all classes of trade. This results in the blending of wheat of the various classes and of widely scattered origins.

Wheat farmers market the wheat they produce except that needed for seed, feed, and food on the farm, but in some cases wheat is stored on the farm sometime before it is marketed. A

large part of the farm surplus is consumed in the United

74 States by people who are not directly engaged in agriculture, and by farmers who do not produce enough for their

own needs. The greatest concentration of consumer population, coupled with the least wheat production, is in the Atlantic Coast

States. It is in those States that a market is found for the greater part of the wheat produced in the Great Plains and the

Pacific Northwest in excess of local requirements. This fact is, in a sense, recognized in the freight rate structure for wheat, where

east-bound rates are generally lower than west-bound rates. Transit privileges permit almost any combination of routes, with stops

at intermediate points for storage, conditioning, and milling, all at the same through rate as if the shipment moved by direct route,

without interruption, from origin to final destination. Freight regulations also permit that, during any part of the movement,

the shipment may consist of whole grain, and in subsequent movement, of milled products; there is no requirement that the identity

of the grain in the original load be preserved in subsequent movements; and the through rate may still prevail even though

only part of the original shipment, within certain minima, arrives at the final destination.

Under the average conditions of the five years, 1931-32 to 1935-36, 16 States each had a surplus of wheat above its own

requirements for seed, feed, and food. This surplus supplied the other 32 States and the District of Columbia, where production

was below consumption in each case, and provided the wheat for United States export and carryover. Map 9 and Table 10 show

the relationship between production and consumption in

75 each State as well as average mill grindings during the five-year period. In Kansas, for instance, an average of

117,474,000 bushels of wheat was produced, while an average of only 34,667,000 bushels was used in the State during this period.

It is estimated that 13,323,000 bushels were used for seed, 14,375,000 bushels were used for feed, and 6,969,000 bushels were used

for food. Kansas, besides using only 30 percent of the wheat it produced during the five-year period, used as food only a little

more than 10 percent of the 65,422,000 bushels of wheat ground at mills in the State. This extra wheat and flour production in

Kansas helps supply other States in which production is less than consumption. Table 10 also shows the average farm disposition

of the wheat production in each State for the five-year period, 1931-32 to 1935-36.

Of the wheat sold from farms during 1928 to 1930 in the Southwest Hard Winter Wheat Area 11.4 percent was milled for consumption locally; 49 percent milled and shipped elsewhere in the United States; 15 percent shipped as wheat elsewhere in the United States; 19.6 percent exported as wheat; and 5 percent added to the wheat carry-over. Similar figures for the Northwest Spring Wheat Area are 12.5 percent milled for consumption locally; 51 percent milled and shipped elsewhere in the United States; 20 percent shipped as wheat elsewhere in the United States; 11.5 percent exported as wheat; and 5 percent added to the wheat carry-over.

Of the value of the 1940 United States wheat production, amounting to \$545,993,000, the value of that used in the farm household amounted to only \$9,221,000, or less than 2 percent of the total. Value of wheat sold was \$424,770,000, or 76 percent of the total. Table 11 gives these data by States for the ten-year period 1930 to 1939, and also for 1940. Of the 1940 United States wheat production, amounting to 816,698,000 bushels, 11,854,000 bushels were ground at mills for home use or exchanged for flour; 61,063,000 bushels were used for seed on the farm where grown; 100,408,000 bushels were fed to livestock on the farm where produced; and 643,373,000 bushels were sold.

Although farmers sold 643,373,000 bushels of wheat during the marketing year 1940-41, the volume of cash sales at six of the primary markets amounted to only 81,096,000 bushels, a reduction of about 30 percent from the average of 118,958,000 bushels for the ten-year period, 1930-31 to 1939-40. For Minneapolis alone the average during the ten-year period was 43,045,000 bushels and for 1940-41 the volume was 35,428,000 bushels. Table 12 gives the annual volume of cash sales at each of six of the primary markets from 1930-31 to 1940-41.

The volume of trading in wheat futures on contract markets is many times greater than the amount of wheat produced, averaging 9,322,500,000 bushels during the ten marketing years 1930-31 to 1939-40 and in the year 1940-41, the volume, even though still large, dropped to 4,784,000,000 bushels. There are nine principal contract markets upon which this trading takes place, but the Chicago Board of Trade handles much more than all others combined. Trading on the Chicago Board of Trade alone averaged 7,816,300,000 bushels during this ten-year period, and amounted to 3,736,000,000 bushels in 1940-41. Table 13 gives

the annual volume of futures trading at each of the principal contract markets from 1930-31 to 1940-41.

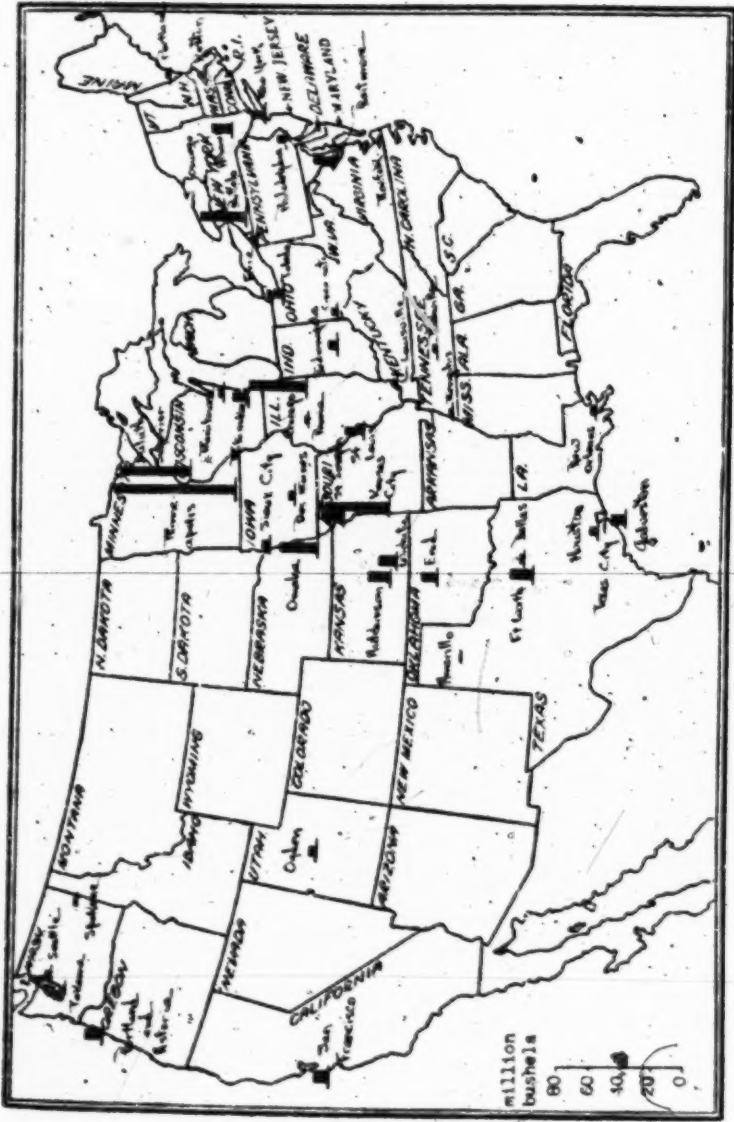
Oregon, Washington, Galveston, New Orleans, New York, and Chicago are the customs districts which have handled most of the United States exports of wheat. Almost half of the exports of wheat flour have left the country from New York. Table 14 shows exports of wheat and flour from the United States by customs districts.

During the period 1930-31 to 1939-40, total exports of wheat and flour from the United States were unusually small, averaging only 68 million bushels. Of these exports 10 million bushels went to the United Kingdom, 25 million bushels to continental Europe, and 12 million bushels to Central and South America. During the 1920's exports averaged 215 million bushels, of which 44 million bushels went to the United Kingdom, 91 million bushels to continental Europe, and 17 million bushels to Central and South America. Table 15 shows total exports of wheat and flour from the United States, by countries of destination, for the marketing years 1910-11 to 1940-41.

Argentina, Australia, Canada, the United States, the Danubian countries, and Russia are the principal wheat exporting countries.

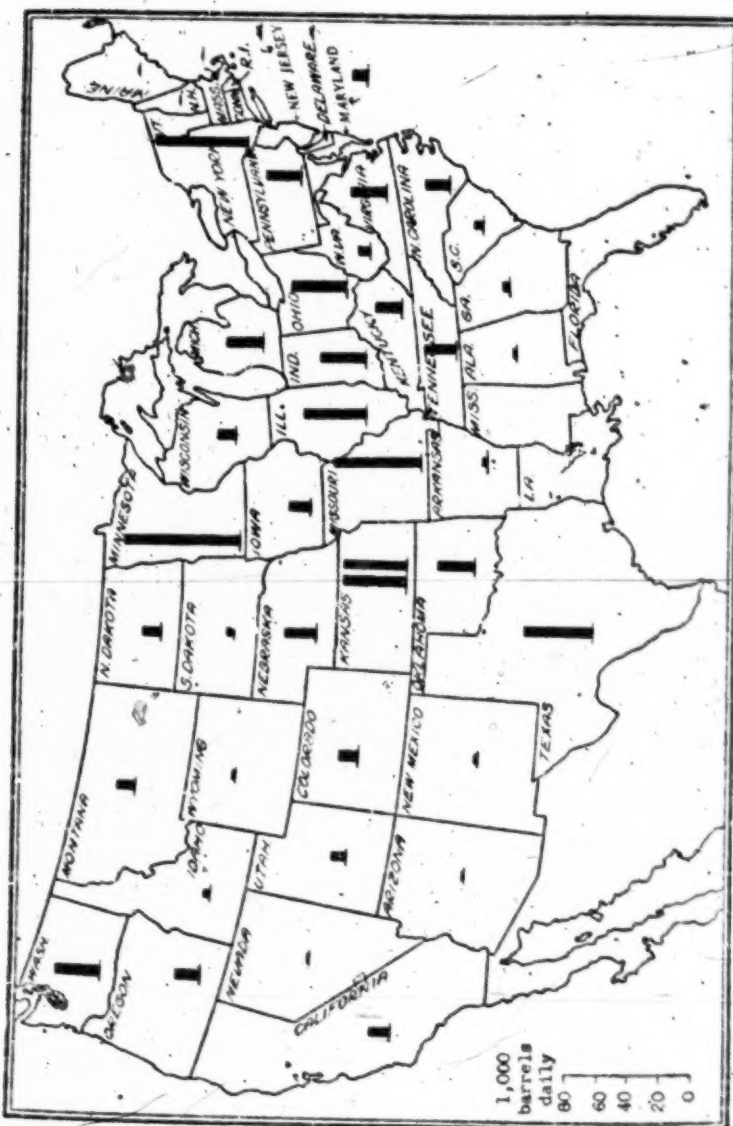
The United Kingdom has been by far the largest importer of wheat, with countries in continental Europe taking the bulk of other imports of wheat. A picture of the international trade in wheat is given by Map 10 and Table 16. Largely as a result of increased production and import restrictions in the importing countries, world trade in wheat has decreased from an average of 756 million bushels during the period 1925-26 to 1929-30 to an average of 545 million bushels during the five marketing years 1934-35 to 1938-39.

Map 6



Storage Capacity of Elevators Reporting Commercial Grain Stocks, June 1, 1941 (Agricultural Marketing Service)

Map 7



Wheat Flour Milling Capacity (Northwestern Miller Almanac)

TABLE 9

WHEAT MOVEMENT AT CENTERS

Receipts and shipments of wheat at leading United States centers, by calendar years, in bushels

[000's omitted]

RECEIPTS

| | 1940 | 1939 | 1938 | 1937 | 1936 | 1935 | 1934 | 1933 | 1932 |
|------------------|---------|---------|--------|--------|--------|--------|--------|--------|--------|
| Chicago | 28,164 | 26,710 | 30,069 | 38,106 | 23,482 | 21,701 | 23,780 | 13,361 | 13,808 |
| New York | 13,430 | 21,286 | 8,042 | 12,202 | 25,535 | 19,934 | 21,242 | 23,404 | 33,311 |
| Minneapolis | 113,373 | 94,901 | 60,191 | 52,389 | 48,828 | 61,471 | 42,910 | 64,076 | 57,586 |
| Duluth-Superior | 55,306 | 49,074 | 52,565 | 30,933 | 11,892 | 20,068 | 23,637 | 45,902 | 40,846 |
| Boston | 4,241 | 3,573 | 230 | 118 | 929 | 1,073 | 464 | 1,000 | 2,410 |
| Toledo | 13,453 | 13,305 | 12,247 | 10,169 | 10,540 | 12,546 | 11,275 | 11,420 | 12,933 |
| Indianapolis | 5,621 | 5,386 | 7,079 | 4,301 | 4,094 | 4,828 | 5,066 | 4,235 | 4,385 |
| St. Joseph | 2,778 | 11,286 | 10,548 | 13,840 | 8,362 | 6,864 | 5,744 | 6,974 | 8,564 |
| Omaha | 14,983 | 21,567 | 21,958 | 22,678 | 20,515 | 16,480 | 15,427 | 14,674 | 17,594 |
| Kansas City | 39,918 | 80,549 | 99,621 | 98,083 | 63,744 | 43,701 | 41,058 | 49,115 | 80,204 |
| Baltimore | 12,282 | 12,083 | 2,354 | 3,129 | 2,109 | 4,067 | 4,639 | 2,117 | 2,298 |
| St. Louis | 19,501 | 26,753 | 21,153 | 22,396 | 14,916 | 12,007 | 15,778 | 15,810 | 14,257 |
| Philadelphia | 10,903 | 6,321 | 2,519 | 1,372 | 1,395 | 2,402 | 2,272 | 5,492 | 3,242 |
| Cincinnati | 5,278 | 6,045 | 4,013 | 4,195 | 4,257 | 4,635 | 5,419 | 4,621 | 4,922 |
| Milwaukee | 2,070 | 4,100 | 5,197 | 6,674 | 3,684 | 4,379 | 4,328 | 2,143 | 2,875 |
| New Orleans | 109 | 4,038 | 5,207 | 1,414 | 213 | 650 | 168 | 636 | 978 |
| Fort Worth | 8,024 | 14,105 | 16,176 | 15,349 | 5,198 | 4,491 | 8,138 | 8,505 | 12,906 |
| Seattle | 7,255 | 8,516 | 8,536 | 8,485 | 0,063 | 6,482 | 9,162 | 8,857 | 6,793 |
| Tacoma | 3,042 | 10,287 | 9,016 | 6,193 | 7,359 | 6,308 | 8,875 | 7,580 | 6,230 |
| Portland, Oregon | 16,083 | 28,658 | 32,547 | 18,486 | 13,125 | 15,162 | 26,048 | 23,796 | 10,104 |
| San Francisco | | | 1,630 | 1,146 | 906 | 1,226 | 1,204 | 1,871 | 1,709 |
| Hawaii | 82,027 | 103,805 | 69,904 | 54,050 | 77,396 | 87,438 | 86,599 | 87,972 | 98,809 |
| Memphis | 284 | 516 | 612 | 279 | 153 | 126 | 228 | 90 | 136 |

SHIPMENTS

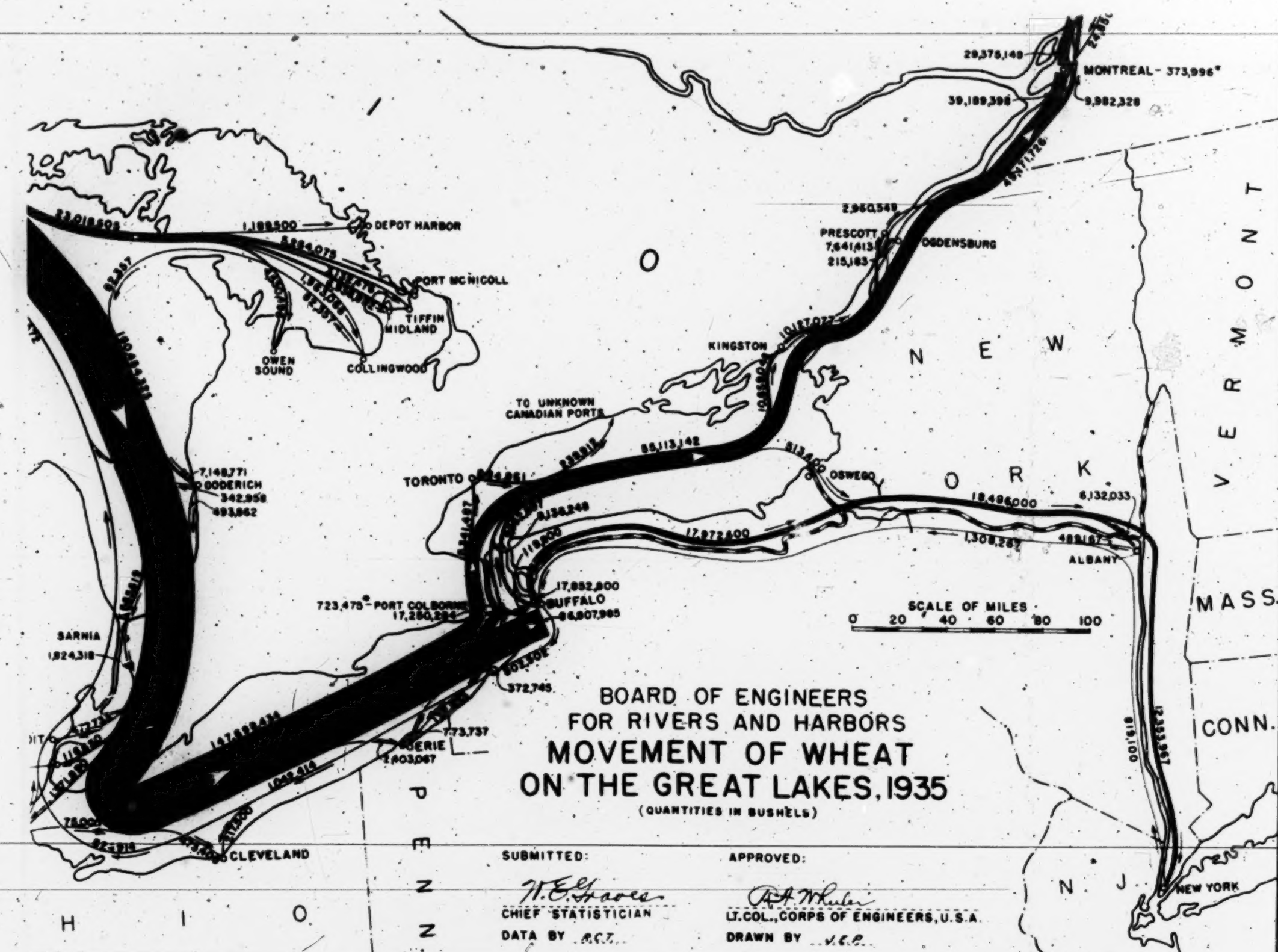
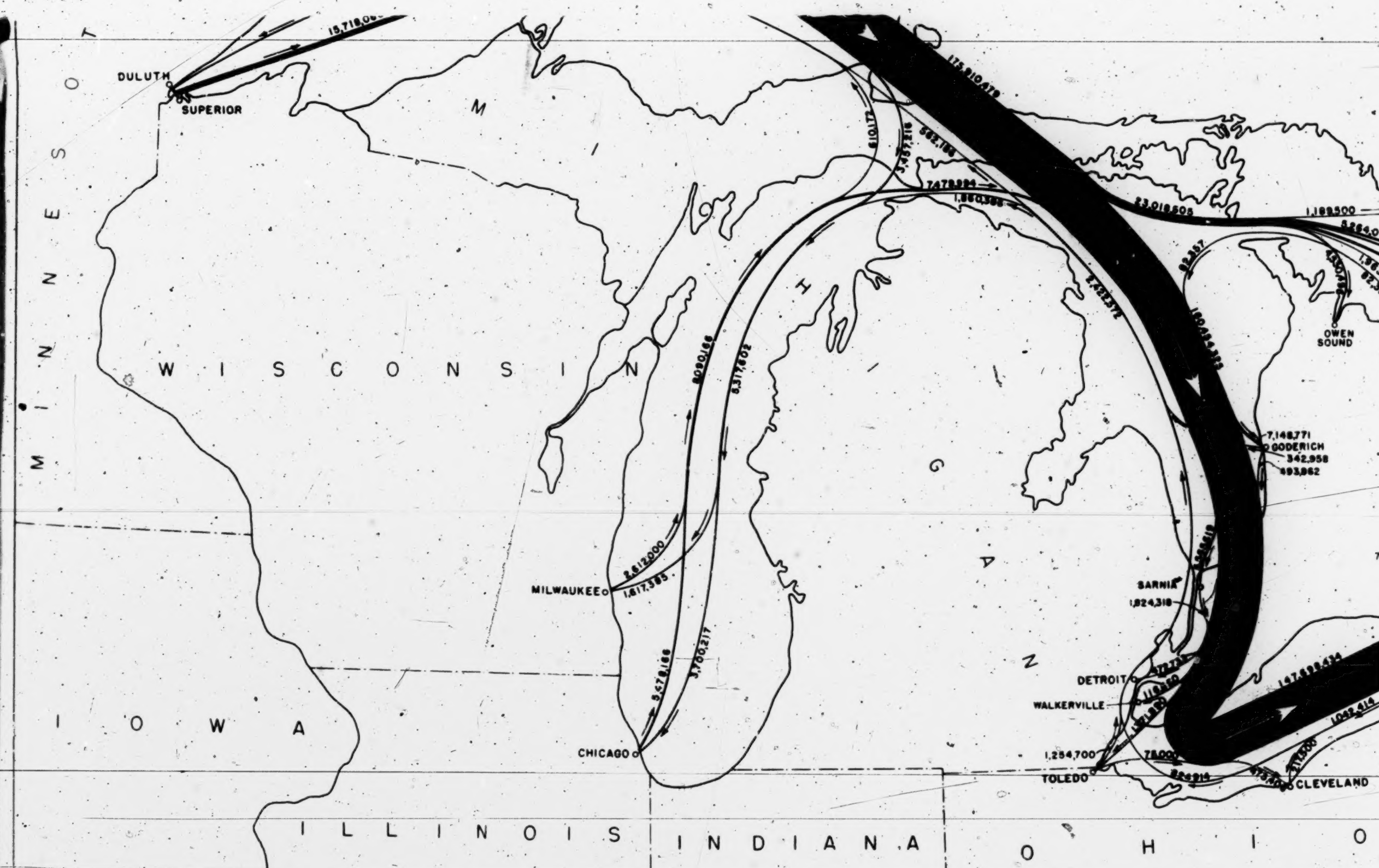
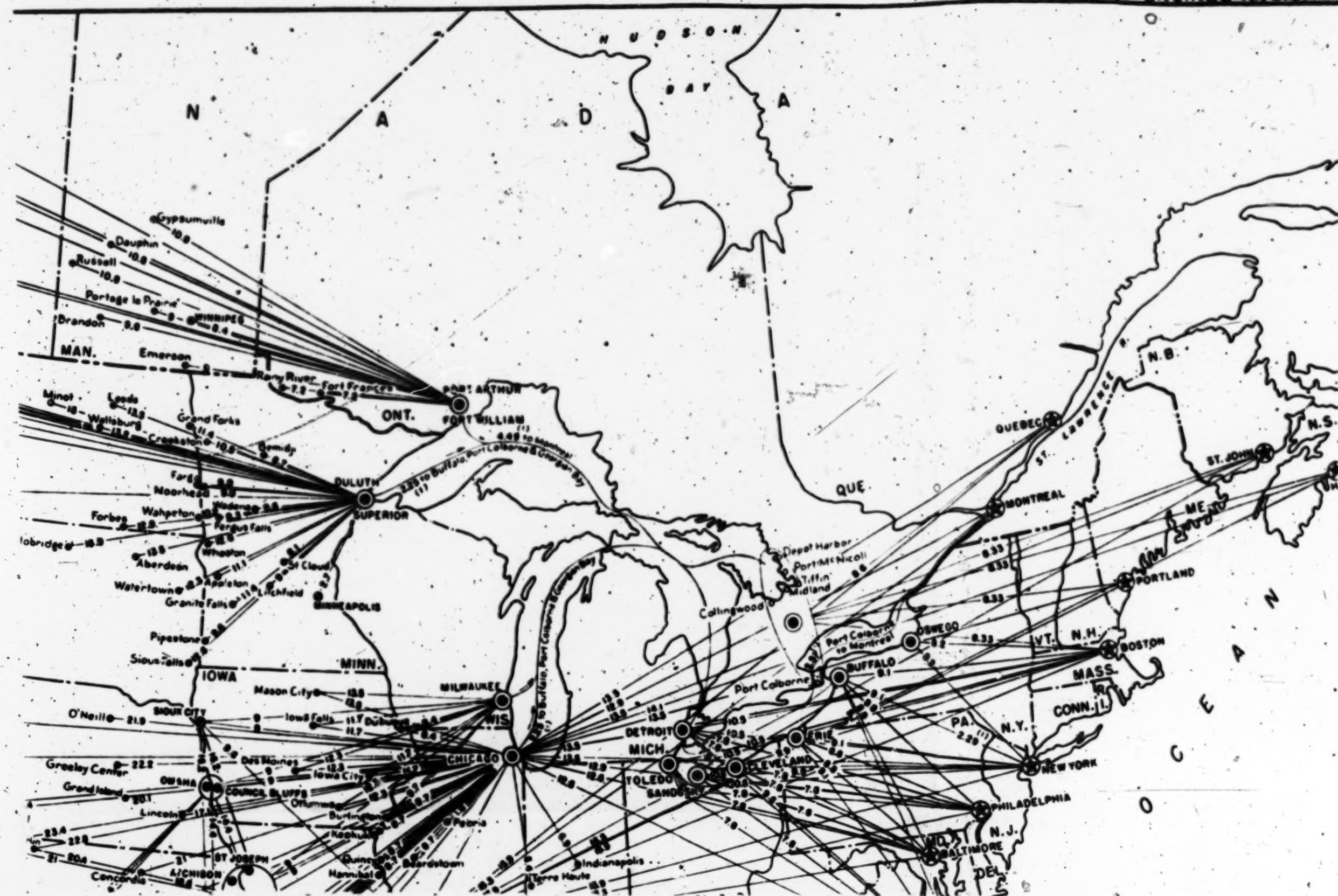
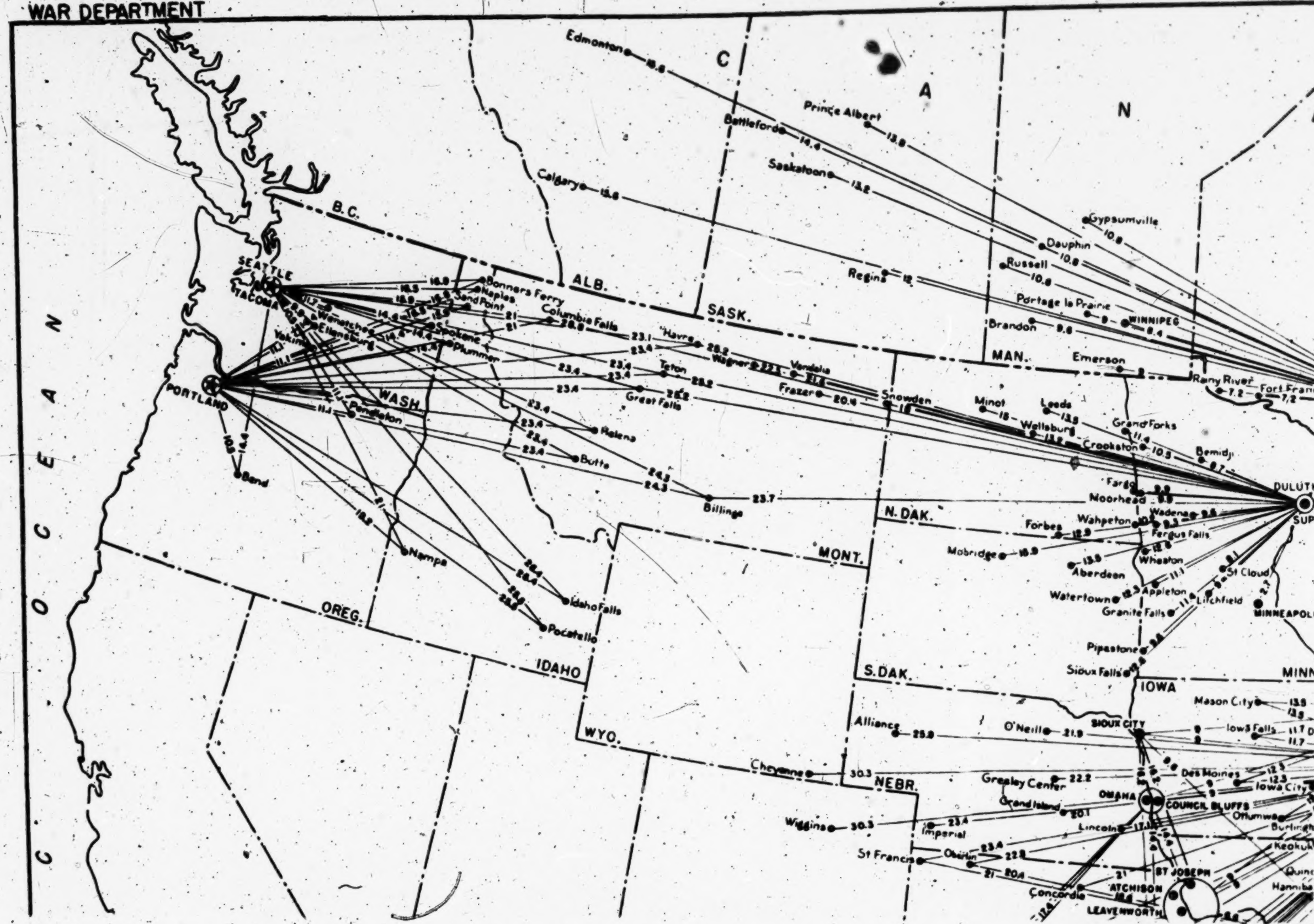
| | 1940 | 1939 | 1938 | 1937 | 1936 | 1935 | 1934 | 1933 | 1932 |
|-----------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Chicago | 20,087 | 23,395 | 25,170 | 32,089 | 20,762 | 14,520 | 18,011 | 10,282 | 17,225 |
| New York | 15,766 | 18,131 | 10,569 | 18,557 | 21,733 | 18,279 | 20,908 | 20,104 | 30,366 |
| Minneapolis | 26,138 | 26,507 | 27,763 | 19,180 | 22,090 | 24,269 | 22,000 | 26,007 | 28,299 |
| Duluth-Superior | 40,791 | 42,056 | 39,280 | 31,402 | 25,485 | 21,265 | 32,230 | 44,908 | 44,009 |
| Boston | 4,228 | 1,652 | 230 | 118 | 929 | 1,073 | 464 | 1,000 | 2,410 |
| Toledo | 4,203 | 4,203 | 4,303 | 3,104 | 4,080 | 5,691 | 5,688 | 4,440 | 5,419 |
| Indianapolis | 1,730 | 2,783 | 2,346 | 2,073 | 2,595 | 2,501 | 2,431 | 2,740 | 3,401 |
| St. Joseph | 7,224 | 7,943 | 10,262 | 8,607 | 6,538 | 4,716 | 5,965 | 6,112 | 7,187 |
| Omaha | 7,026 | 9,441 | 14,306 | 13,650 | 12,357 | 9,348 | 9,292 | 15,821 | 13,348 |
| Kansas City | 33,975 | 47,439 | 51,196 | 53,121 | 32,352 | 26,556 | 31,344 | 26,932 | 38,532 |
| Baltimore | 14,521 | 3,137 | 597 | 254 | 4,067 | 266 | 280 | 255 | 0,800 |
| Philadelphia | 11,276 | 2,680 | 938 | 1,06 | 4,852 | 241 | 1,170 | 541 | 4,262 |
| Cincinnati | 5,073 | 4,772 | 3,484 | 3,320 | 3,524 | 4,572 | 3,411 | 4,544 | 5,038 |
| Milwaukee | 1,788 | 4,272 | 7,048 | 8,708 | 4,690 | 3,914 | 3,467 | 6,374 | 3,087 |
| New Orleans | 224 | 49 | 35 | 39 | 109 | 269 | 116 | 787 | 4,550 |
| Portland, Oreg. | 8,961 | 23,942 | 641 | 10,863 | 6,077 | 3,399 | 17,764 | 9,988 | 8,835 |
| Fort Worth | 5,910 | 9,586 | 12,738 | 7,518 | 1,788 | 2,014 | 3,098 | 4,578 | 6,918 |

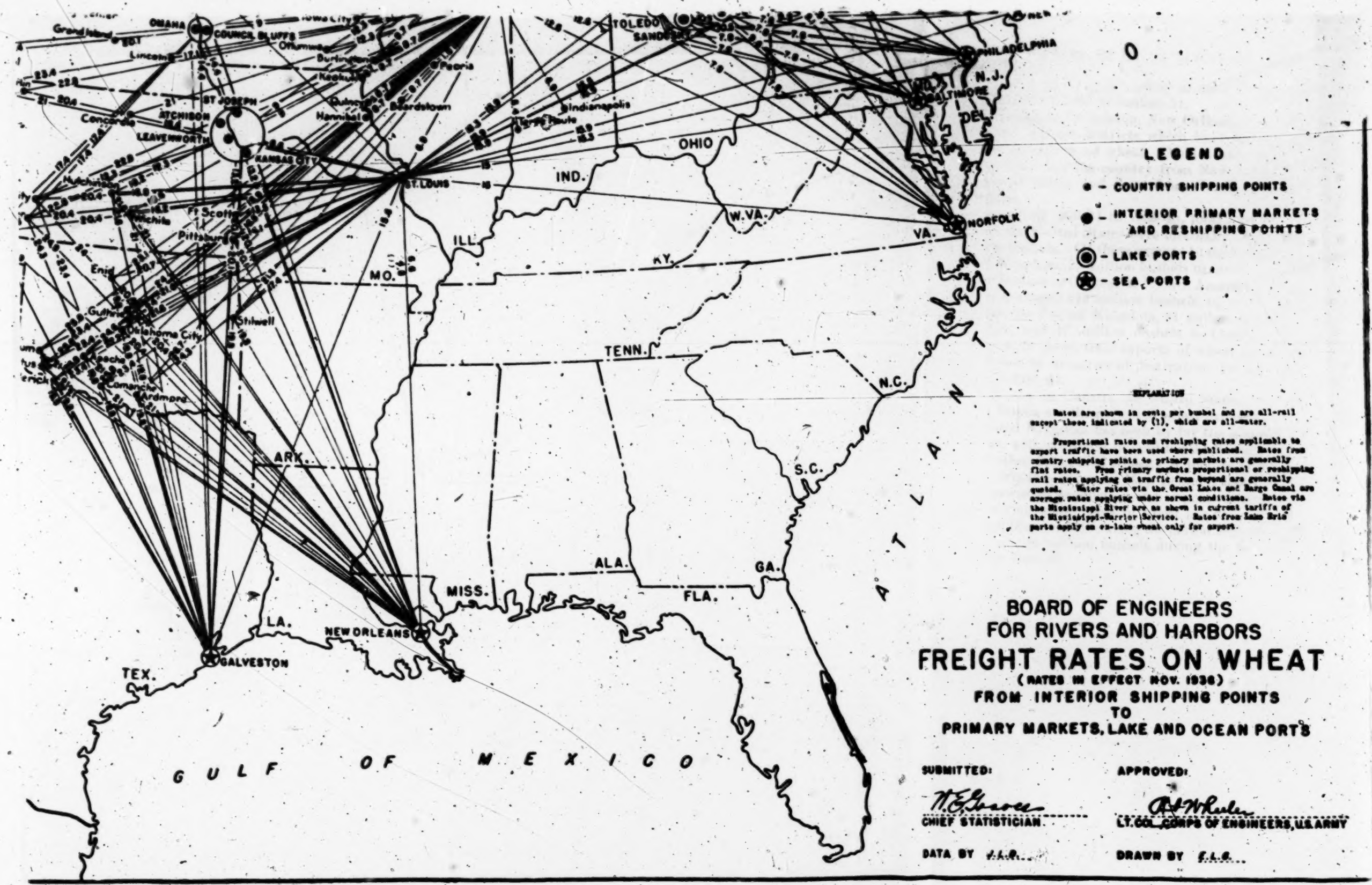
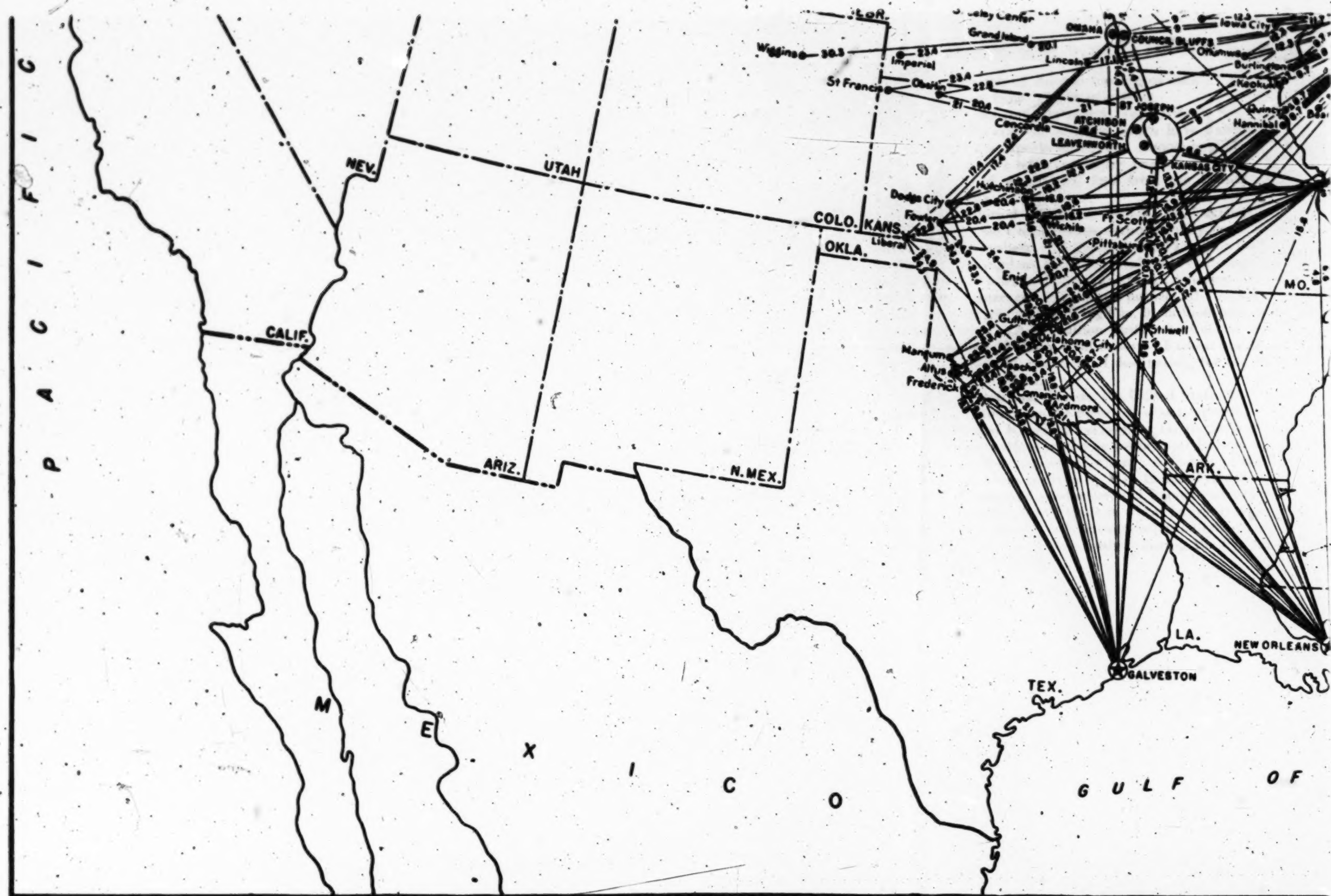
Includes three receipts.

a. Carloads, 000's not omitted.

b. Centals of 100 lbs., 000's omitted.

c. Lake receipts only.





- LEGEND**
- - COUNTRY SHIPPING POINTS
 - - INTERIOR PRIMARY MARKETS AND RESHIPPING POINTS
 - - LAKE PORTS
 - ⊙ - SEA PORTS

EXPLANATION

Rates are shown in cents per bushel and are all-rail except those indicated by (1), which are all-water.

Proportional rates and reshipping rates applicable to export traffic have been used where published. Rates from country shipping points to primary markets are generally flat rates. From primary markets proportional or reshipping rail rates applying on traffic from beyond are generally quoted. Water rates via the Great Lakes and St. Lawrence are average rates applying under normal conditions. Rates via the Mississippi River are as shown in current tariffs of the Mississippi River Service. Rates from Lake Erie ports apply on ex-lake wheat only for export.

**BOARD OF ENGINEERS
FOR RIVERS AND HARBORS
FREIGHT RATES ON WHEAT**
(RATES IN EFFECT NOV. 1936)
FROM INTERIOR SHIPPING POINTS
TO
PRIMARY MARKETS, LAKE AND OCEAN PORTS

SUBMITTED: *H. E. Brown*
CHIEF STATISTICIAN

APPROVED: *W. H. Wheeler*
LT. COL. CORPS OF ENGINEERS, U.S. ARMY

DATA BY: J. L. R. DRAWN BY: J. L. R.

TABLE 9—Continued

84

FLOUR MOVEMENT AT CENTERS

Receipts and shipments of wheat flour at leading United States centers, by calendar years, in barrels

[000's omitted]

RECEIPTS

| | 1940 | 1939 | 1938 | 1937 | 1936 | 1935 | 1934 | 1933 | 1932 | 1931 |
|------------------|--------|--------|--------|--------|--------|-------|-------|-------|-------|--------|
| Chicago | 10,865 | 11,575 | 10,969 | 10,325 | 10,612 | 9,365 | 8,956 | 8,949 | 8,790 | 10,485 |
| New York | 8,290 | 8,273 | 7,782 | 7,369 | 7,928 | 8,222 | 8,326 | 8,269 | 7,127 | 10,344 |
| Minneapolis | (7) | (7) | 683 | 482 | 472 | 316 | 326 | 312 | 345 | 212 |
| Boston | 1,008 | 1,029 | 1,030 | 1,028 | 1,222 | 1,176 | 1,113 | 1,115 | 1,253 | 1,109 |
| Baltimore | 655 | 623 | 880 | 683 | 696 | 575 | 614 | 663 | 684 | 689 |
| Philadelphia | 1,708 | 1,684 | 1,524 | 1,498 | 1,555 | 1,357 | 1,360 | 1,363 | 1,766 | 1,988 |
| Milwaukee | 840 | 861 | 900 | 761 | 821 | 734 | 774 | 698 | 955 | 1,005 |
| New Orleans | (7) | (7) | (7) | (7) | (7) | (7) | 703 | 764 | 1,048 | 1,413 |
| Portland, Oregon | 1,106 | 1,226 | 802 | 908 | 974 | 1,252 | 635 | 1,448 | 1,065 | 1,288 |
| San Francisco | 5 | | | 1,968 | 2,323 | 3,349 | 2,938 | 2,706 | 2,997 | 975 |

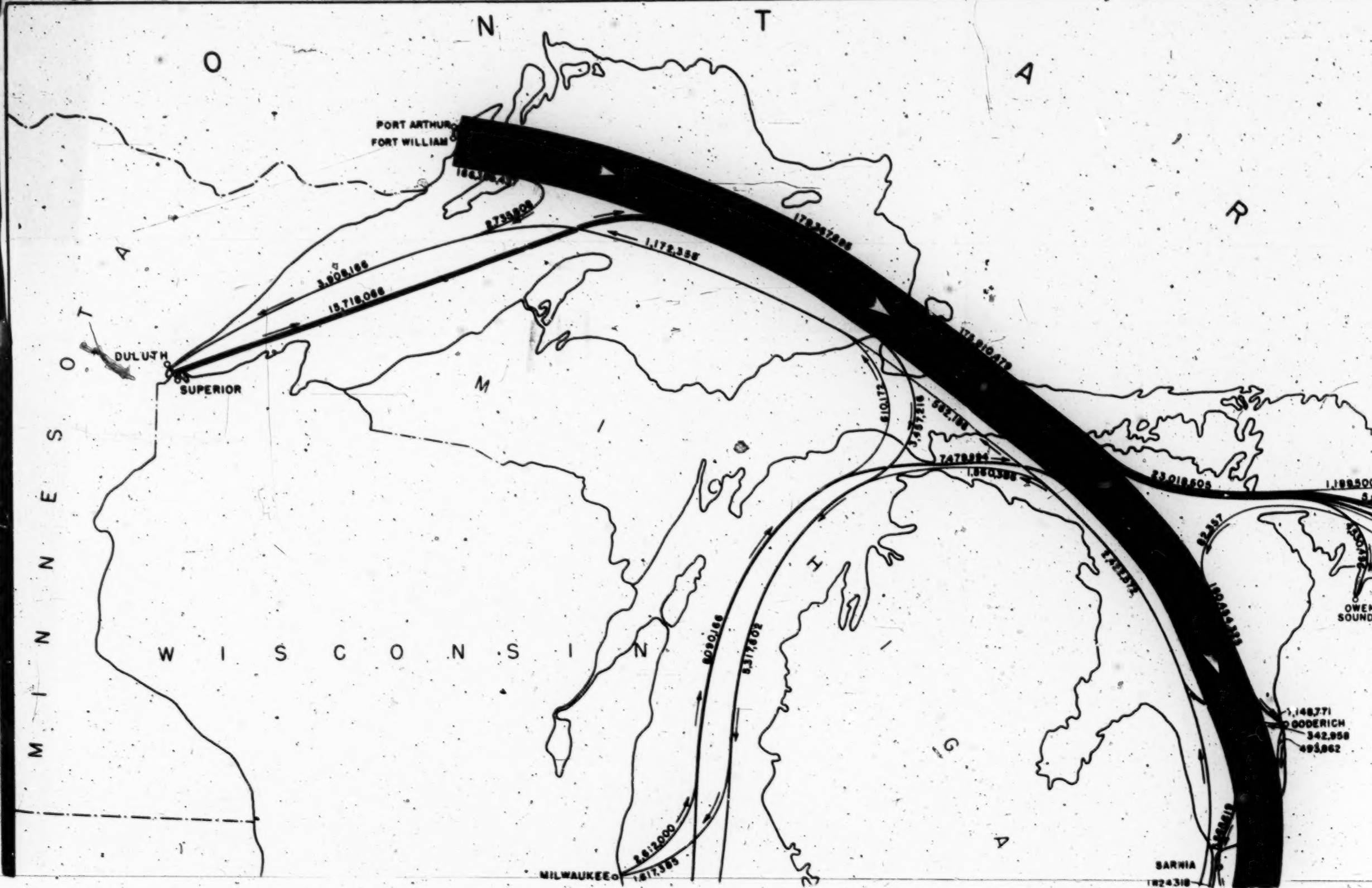
SHIPMENTS

| | 1940 | 1939 | 1938 | 1937 | 1936 | 1935 | 1934 | 1933 | 1932 | 1931 |
|------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Chicago | 6,926 | 7,284 | 7,051 | 6,589 | 7,426 | 8,508 | 6,033 | 8,448 | 5,192 | 6,785 |
| New York | 2,065 | 2,385 | 2,398 | 2,427 | 2,580 | 2,383 | 2,364 | 2,107 | 905 | 3,685 |
| Minneapolis | 5,870 | 6,305 | 6,270 | 6,349 | 7,163 | 7,018 | 7,549 | 7,595 | 7,685 | 9,702 |
| Boston | 1 | 5 | 5 | 10 | 4 | 5 | 13 | 37 | 199 | 264 |
| Baltimore | | 46 | 19 | 28 | 16 | 19 | 11 | 22 | 45 | 136 |
| Philadelphia | 10 | 1 | 9 | 6 | 2 | 1 | 2 | 1 | 8 | 13 |
| Milwaukee | 281 | 100 | 45 | 260 | 12 | 11 | 202 | 97 | 375 | 470 |
| New Orleans | (7) | (7) | (7) | (7) | 198 | 150 | 204 | 317 | 518 | 917 |
| Portland, Oregon | 2,462 | 2,186 | 2,073 | 1,907 | 730 | 142 | 1,986 | 1,948 | 1,837 | 2,180 |
| St. Joseph, Mo. | 897 | 809 | 963 | 951 | 1,006 | 1,163 | 976 | 1,065 | 1,057 | 1,350 |

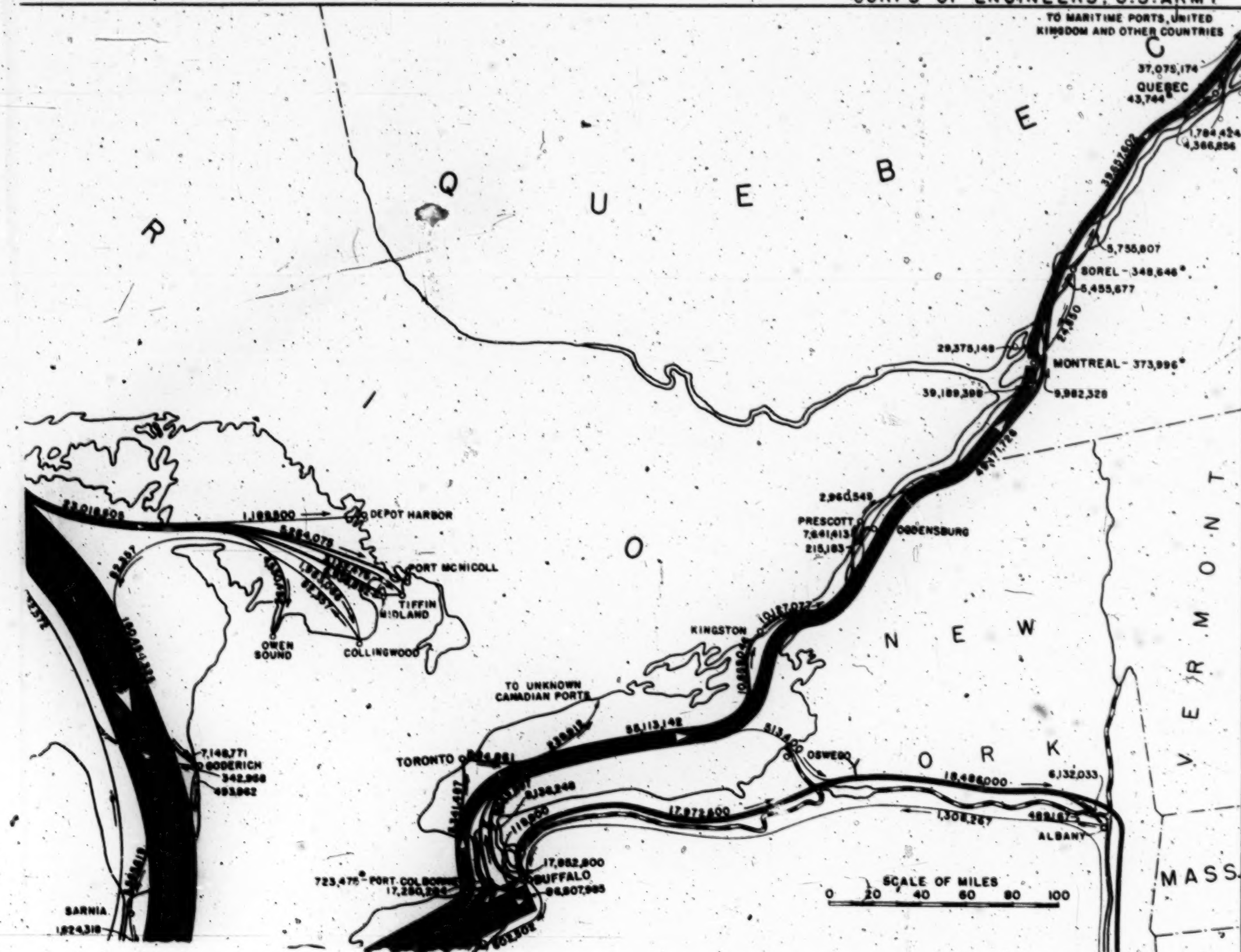
1 Not including coastal receipts.

2 Not available.

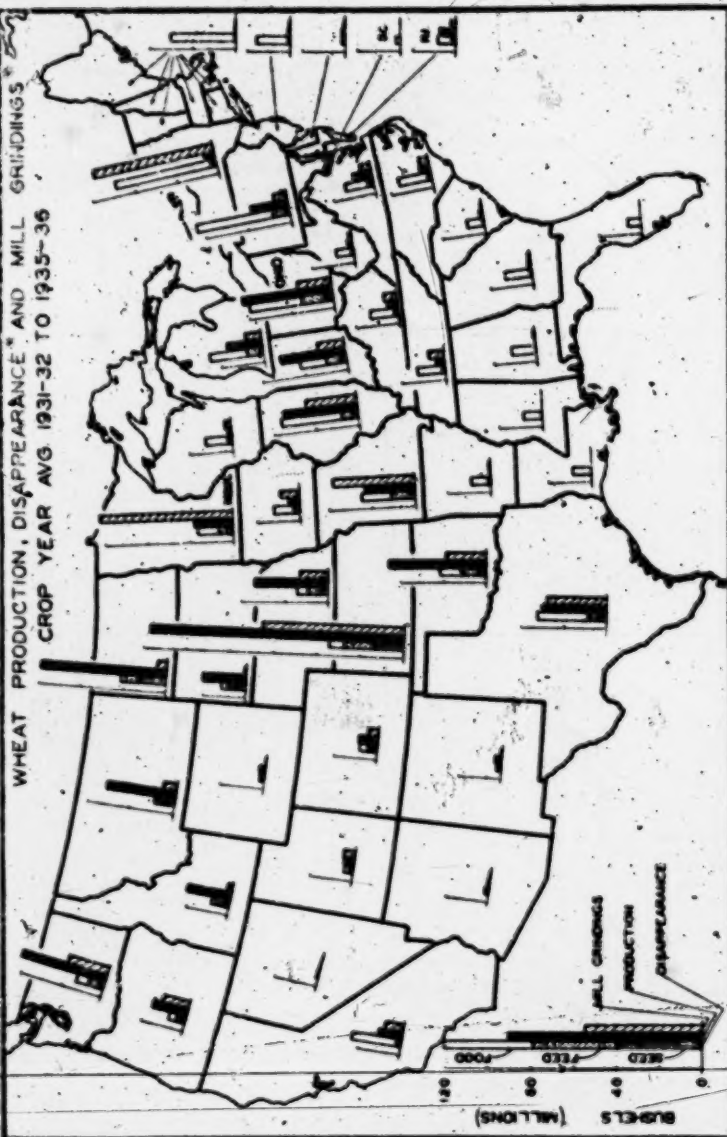
Source: The Northwestern Miller, April 30, 1941.



C



Map 9



* UNOFFICIAL ESTIMATES-JHS

88. TABLE 10.—Wheat: Estimated total disappearance compared with farm disposition of production, by States, 5-year average 1931-32 to 1935-36

| State | Estimated total disappearance | | | | Production | Farm disposition of production | | | | Total mill grindings |
|--------|-------------------------------|---------------|---------------|---------------|---------------|--------------------------------|---------------|------------------|---------------|----------------------|
| | Seed | Feed | Food | Total | | Seed | Feed | Home consumption | Sold | |
| | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels |
| Maine | 14 | 104 | 2,905 | 3,113 | 124 | 14 | 28 | 12 | 70 | 47 |
| N. H. | 0 | 44 | 1,752 | 1,796 | (1) | 0 | 0 | 0 | 0 | 124 |
| Vt. | 0 | 69 | 1,366 | 1,435 | 4 | 0 | 2 | 0 | 2 | 6 |
| Mass. | 0 | 109 | 15,343 | 15,452 | (1) | 0 | 0 | 0 | 0 | 25 |
| R. I. | 0 | 81 | 2,420 | 2,501 | (1) | 0 | 0 | 0 | 0 | 6 |
| Conn. | 0 | 100 | 8,975 | 9,075 | (1) | 0 | 0 | 0 | 0 | 40 |
| N. Y. | 527 | 2,238 | 45,597 | 48,362 | 5,020 | 500 | 1,660 | 76 | 2,784 | 57,330 |
| N. J. | 113 | 780 | 14,954 | 15,851 | 1,176 | 105 | 590 | 10 | 471 | 334 |
| Pa. | 1,987 | 6,310 | 35,441 | 43,738 | 17,551 | 1,919 | 5,865 | 943 | 8,824 | 6,300 |
| Ohio | 3,951 | 11,323 | 24,098 | 39,372 | 41,936 | 3,823 | 10,484 | 1,193 | 26,436 | 16,122 |
| Ind. | 3,023 | 6,470 | 12,337 | 21,830 | 30,820 | 2,914 | 5,862 | 649 | 21,395 | 12,646 |
| Ill. | 2,985 | 4,971 | 27,944 | 35,900 | 34,451 | 2,843 | 4,317 | 338 | 26,953 | 23,690 |
| Mich. | 1,627 | 6,315 | 17,053 | 24,995 | 16,442 | 1,516 | 5,660 | 700 | 8,536 | 7,763 |
| Wisc. | 213 | 1,451 | 10,730 | 12,394 | 1,797 | 187 | 1,043 | 160 | 407 | 3,078 |
| Minn. | 2,827 | 4,101 | 9,701 | 16,629 | 17,871 | 2,561 | 3,564 | 808 | 10,938 | 62,217 |
| Iowa | 600 | 2,267 | 9,409 | 12,276 | 5,185 | 523 | 1,314 | 128 | 3,220 | 8,842 |
| Mo. | 2,449 | 8,436 | 14,153 | 25,038 | 23,100 | 2,199 | 6,763 | 508 | 13,630 | 37,839 |
| N. D. | 13,374 | 5,636 | 2,655 | 21,665 | 59,675 | 11,640 | 5,438 | 982 | 41,615 | 4,951 |
| S. D. | 4,598 | 4,085 | 2,643 | 11,326 | 20,113 | 3,128 | 3,504 | 431 | 13,049 | 719 |
| Nebr. | 3,893 | 5,146 | 5,126 | 14,165 | 34,065 | 3,390 | 4,655 | 594 | 25,426 | 12,890 |
| Kans. | 13,323 | 14,373 | 6,969 | 34,667 | 117,474 | 11,315 | 13,557 | 892 | 91,710 | 65,422 |
| D. C. | 0 | 0 | 1,974 | 1,974 | 0 | 0 | 0 | 0 | 0 | 90 |
| Del. | 146 | 363 | 978 | 1,487 | 1,432 | 139 | 334 | 30 | 929 | 315 |
| Md. | 774 | 1,308 | 6,330 | 8,412 | 7,586 | 735 | 1,209 | 242 | 5,400 | 2,339 |
| Va. | 894 | 1,987 | 10,492 | 13,343 | 8,695 | 805 | 1,753 | 1,484 | 4,653 | 4,738 |
| W. Va. | 248 | 804 | 7,225 | 8,276 | 2,006 | 220 | 590 | 355 | 891 | 1,335 |
| N. C. | 563 | 946 | 13,906 | 15,445 | 4,731 | 567 | 768 | 1,526 | 1,870 | 4,442 |
| S. C. | 205 | 283 | 6,577 | 6,966 | 1,238 | 196 | 214 | 338 | 471 | 399 |
| Ga. | 226 | 301 | 12,346 | 12,776 | 1,188 | 215 | 131 | 201 | 641 | 790 |
| Fla. | 0 | 23 | 6,056 | 6,079 | 0 | 0 | 0 | 0 | 0 | 0 |
| Ky. | 569 | 1,044 | 11,419 | 13,032 | 4,671 | 544 | 615 | 406 | 3,106 | 6,203 |
| Tenn. | 510 | 1,171 | 11,311 | 12,932 | 4,113 | 487 | 748 | 741 | 2,137 | 7,534 |
| Ala. | 8 | 91 | 11,533 | 11,632 | 60 | 8 | 6 | 14 | 32 | 401 |
| Miss. | 0 | 97 | 8,597 | 8,694 | (1) | 0 | 0 | 0 | 0 | 0 |
| Ark. | 103 | 751 | 8,280 | 9,144 | 552 | 86 | 130 | 39 | 297 | 762 |
| La. | 0 | 53 | 8,552 | 8,605 | (1) | 0 | 0 | 0 | 0 | 0 |
| Okl. | 4,088 | 7,673 | 10,021 | 21,782 | 44,868 | 3,775 | 6,061 | 320 | 34,712 | 18,744 |
| Tex. | 3,356 | 4,916 | 24,208 | 32,480 | 30,105 | 2,653 | 2,404 | 263 | 24,785 | 27,906 |
| Mont. | 4,335 | 3,063 | 1,974 | 9,372 | 32,170 | 3,682 | 2,873 | 297 | 25,318 | 6,442 |
| Ida. | 1,631 | 5,113 | 1,761 | 8,505 | 20,771 | 1,555 | 4,830 | 321 | 14,065 | 2,243 |
| Wyo. | 335 | 736 | 847 | 1,918 | 2,127 | 267 | 628 | 44 | 1,188 | 418 |
| Colo. | 1,809 | 2,465 | 3,873 | 8,147 | 8,712 | 1,379 | 2,109 | 151 | 5,073 | 4,823 |
| N. M. | 280 | 290 | 1,564 | 2,143 | 3,025 | 218 | 228 | 73 | 2,506 | 278 |
| Ariz. | 42 | 216 | 1,484 | 1,762 | 877 | 56 | 129 | 8 | 694 | 250 |
| Utah | 384 | 1,595 | 1,896 | 3,845 | 4,556 | 363 | 1,471 | 292 | 2,430 | 5,240 |
| Neu. | 22 | 226 | 348 | 596 | 352 | 20 | 188 | 6 | 138 | 105 |
| Wash. | 3,169 | 4,218 | 5,718 | 13,105 | 42,083 | 3,104 | 3,239 | 86 | 35,632 | 19,007 |
| Ore. | 1,763 | 2,621 | 3,540 | 7,924 | 16,660 | 1,696 | 2,201 | 63 | 12,729 | 12,847 |
| Calif. | 4,303 | 1,079 | 20,548 | 22,930 | 11,192 | 1,210 | 413 | 9 | 9,860 | 8,702 |
| U. S. | 82,307 | 127,663 | 473,000 | 683,000 | 680,603 | 72,567 | 107,608 | 15,755 | 484,673 | 457,296 |

1 No data reported although a little wheat is shown in 1939 Census.

Source: Estimated total disappearance and mill grindings are preliminary data (12-8-36) prepared by Division of Statistical and Historical Research, Bureau of Agricultural Economics, U. S. Department of Agriculture. Production and farm disposition are from Agricultural Marketing Service, U. S. Department of Agriculture.

90 TABLE 11.—Wheat: Value of production, value for farm household use, and value of sales, by States, average 1930-1939, and 1940

| State | Value of production | Average 1930-1939 | | | | 1940 | | | | |
|--------|---------------------|------------------------------|--------------------------------|----------------|--------------------------------|---------------------|------------------------------|--------------------------------|----------------|--------------------------------|
| | | Value for farm household use | | Value of sales | | Value of production | Value for farm household use | | Value of sales | |
| | | Amount | Percent of value of production | Amount | Percent of value of production | | Amount | Percent of value of production | Amount | Percent of value of production |
| | 1,000 dollars | 1,000 dollars | Percent | 1,000 dollars | Percent | 1,000 dollars | 1,000 dollars | Percent | 1,000 dollars | Percent |
| Maine | 120 | 14 | 11 | 71 | 58 | | | | | |
| Vt. | 4 | (1) | (1) | 3 | 80 | | | | | |
| N. Y. | 4,705 | 66 | 1 | 2,631 | 56 | 6,337 | 101 | 3 | 3,840 | 62 |
| N. J. | 1,040 | 9 | 1 | 437 | 43 | 1,105 | 8 | 1 | 460 | 44 |
| Pa. | 15,913 | 697 | 4 | 8,226 | 52 | 15,319 | 354 | 4 | 8,113 | 53 |
| Ohio | 31,115 | 832 | 3 | 19,331 | 63 | 31,063 | 322 | 2 | 19,470 | 63 |
| Ind. | 22,336 | 397 | 2 | 14,908 | 67 | 31,706 | 361 | 1 | 13,913 | 64 |
| Ill. | 27,940 | 197 | 1 | 22,553 | 81 | 38,106 | 103 | (1) | 23,960 | 65 |
| Mich. | 12,553 | 430 | 3 | 6,903 | 54 | 13,537 | 330 | 2 | 7,812 | 58 |
| Wis. | 1,460 | 139 | 9 | 341 | 23 | 1,307 | 63 | 5 | 374 | 29 |
| Minn. | 17,804 | 546 | 3 | 12,378 | 70 | 22,448 | 436 | 3 | 17,471 | 78 |
| Iowa | 5,657 | 89 | 2 | 3,537 | 62 | 5,441 | 36 | 1 | 4,339 | 80 |
| Mo. | 20,196 | 336 | 2 | 12,862 | 63 | 21,361 | 174 | 1 | 15,775 | 73 |
| N. D. | 60,984 | 523 | 1 | 30,046 | 73 | 65,026 | 469 | 1 | 34,563 | 57 |
| S. D. | 12,696 | 198 | 2 | 5,393 | 66 | 17,360 | 174 | 1 | 12,938 | 81 |
| Nebr. | 20,306 | 336 | 1 | 23,086 | 79 | 23,654 | 104 | 1 | 18,864 | 83 |
| Kans. | 23,932 | 415 | (1) | 68,294 | 89 | 73,024 | 304 | (1) | 68,790 | 94 |
| Del. | 1,375 | 34 | 3 | 811 | 66 | 1,111 | 23 | 3 | 530 | 75 |
| Md. | 6,022 | 185 | 3 | 4,917 | 74 | 5,826 | 127 | 2 | 4,468 | 77 |
| Va. | 7,378 | 1,360 | 17 | 3,945 | 53 | 7,278 | 1,023 | 14 | 4,063 | 56 |
| W. Va. | 1,696 | 300 | 16 | 746 | 49 | 1,774 | 317 | 18 | 587 | 33 |
| N. C. | 4,642 | 1,544 | 33 | 1,812 | 39 | 5,703 | 1,365 | 23 | 2,682 | 47 |
| S. C. | 1,386 | 422 | 34 | 464 | 36 | 2,365 | 694 | 27 | 1,119 | 47 |
| Ga. | 1,386 | 314 | 25 | 584 | 47 | 1,711 | 466 | 27 | 811 | 47 |
| W. Ky. | 4,803 | 346 | 8 | 3,015 | 67 | 4,388 | 362 | 8 | 2,845 | 65 |
| Tenn. | 3,904 | 633 | 16 | 2,346 | 57 | 4,340 | 633 | 15 | 3,723 | 63 |
| Ala. | 54 | 14 | 26 | 25 | 46 | 70 | 12 | 17 | 39 | 56 |
| Miss. | | | | | | | | | | |
| Ark. | 451 | 36 | 8 | 339 | 53 | 353 | 17 | 7 | 121 | 46 |
| Okl. | 20,923 | 163 | 1 | 24,855 | 80 | 34,363 | 95 | (1) | 20,048 | 85 |
| Texas | 20,453 | 105 | 1 | 17,365 | 85 | 18,787 | 32 | (1) | 16,519 | 88 |
| Mont. | 22,360 | 161 | 1 | 17,912 | 80 | 33,061 | 169 | 1 | 20,436 | 89 |
| Ida. | 13,933 | 173 | 1 | 9,744 | 70 | 13,411 | 115 | 1 | 9,431 | 70 |
| Wyo. | 1,677 | 36 | 2 | 1,080 | 64 | 2,012 | 47 | 3 | 1,306 | 65 |
| Colo. | 7,978 | 76 | 1 | 5,756 | 72 | 8,000 | 41 | 1 | 6,063 | 76 |
| N. M. | 1,716 | 43 | 3 | 1,376 | 80 | 1,094 | 25 | 2 | 784 | 72 |
| Ariz. | 722 | 8 | 1 | 577 | 80 | 663 | 4 | 1 | 521 | 79 |
| Utah. | 2,633 | 177 | 5 | 1,919 | 36 | 2,526 | 156 | 5 | 1,434 | 56 |
| Nev. | 310 | 4 | 1 | 136 | 41 | 377 | 5 | 1 | 150 | 40 |
| Wash. | 26,006 | 43 | (1) | 24,319 | 87 | 24,667 | 32 | (1) | 22,140 | 90 |
| Ore. | 12,170 | 31 | (1) | 9,814 | 81 | 10,826 | 13 | (1) | 9,034 | 83 |
| Calif. | 9,936 | 6 | (1) | 8,686 | 87 | 8,755 | 3 | (1) | 7,726 | 86 |
| U. S. | 514,765 | 11,398 | 2.2 | 373,909 | 73 | 545,093 | 9,221 | 1.7 | 424,776 | 78 |

1 Less than 500 dollars.

1 Less than .5 percent.

Source: U. S. Department of Agriculture, Agricultural Marketing Service.

92 TABLE 12.—Wheat: Volume of cash sales¹ at 6 primary markets, crop years, 1930 to 1940

| Year beginning July | Chicago | Minneapolis | Kansas City | St. Louis | Omaha | Duluth | Total 6 markets |
|---------------------|---------------|---------------|---------------|---------------|---------------|---------------|-----------------|
| | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels |
| 1930 | 10,448 | 83,962 | 55,437 | 11,055 | 24,456 | 45,296 | 230,614 |
| 1931 | 9,369 | 31,444 | 53,090 | 8,523 | 10,556 | 7,095 | 120,676 |
| 1932 | 4,461 | 65,882 | 29,292 | 4,966 | 5,592 | 26,253 | 136,746 |
| 1933 | 4,714 | 36,612 | 20,754 | 7,228 | 5,968 | 16,749 | 92,025 |
| 1934 | 5,214 | 17,883 | 12,802 | 8,334 | 3,534 | 5,060 | 52,827 |
| 1935 | 6,010 | 47,940 | 31,298 | 6,834 | 10,524 | 4,618 | 107,524 |
| 1936 | 5,112 | 16,072 | 27,926 | 6,556 | 11,452 | 2,626 | 69,744 |
| 1937 | 10,407 | 35,528 | 49,736 | 13,700 | 14,799 | 8,184 | 132,354 |
| 1938 | 6,012 | 43,911 | 50,570 | 9,600 | 17,280 | 10,473 | 137,846 |
| 1939 | 2,968 | 51,216 | 27,214 | 7,586 | 9,610 | 10,618 | 104,222 |
| 1940 | 1,856 | 35,428 | 24,674 | 8,226 | 6,860 | 7,052 | 81,096 |

¹ Converted from carlots at an average of 1,500 bushels per car.

Source: Bureau of Agricultural Economics.

93 TABLE 13.—Wheat: Volume of futures trading by contract markets, crop years, 1930 to 1940

| Year beginning July | Chicago Board of Trade | Chicago Open Board of Trade | Minneapolis Chamber of Commerce | Kansas City Board of Trade | Duluth Board of Trade | Merchants' Exchange of St. Louis | Milwaukee Grain & Stock Exchange | Seattle Grain Exchange | Portland Grain Exchange | All Contract Markets ¹ |
|---------------------|------------------------|-----------------------------|---------------------------------|----------------------------|-----------------------|----------------------------------|----------------------------------|------------------------|-------------------------|-----------------------------------|
| | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels |
| 1930 | 8,360 | 297 | 581 | 515 | 220 | 8.8 | 15.3 | 12.2 | 12.8 | 10,063 |
| 1931 | 8,566 | 334 | 364 | 773 | 67 | 15.2 | 17.6 | 5.4 | 2.9 | 10,147 |
| 1932 | 9,060 | 267 | 589 | 799 | 102 | 10.8 | 19.4 | 5.4 | 3.1 | 10,800 |
| 1933 | 8,590 | 249 | 605 | 735 | 72 | 6.1 | 18.7 | 6.0 | 3.3 | 10,060 |
| 1934 | 6,798 | 128 | 457 | 678 | 16 | 7 | 13.4 | 3.6 | 1.4 | 8,067 |
| 1935 | 7,272 | 132 | 526 | 666 | 31 | 1.8 | 12.9 | 2.8 | 7 | 8,644 |
| 1936 | 10,152 | 176 | 442 | 855 | 11 | 2.2 | 16.4 | 1.9 | 7 | 11,659 |
| 1937 | 8,301 | 159 | 437 | 800 | 38 | 2.3 | 10.8 | 3.7 | 8 | 9,752 |
| 1938 | 4,372 | 114 | 404 | 559 | 48 | | 3.8 | 3.6 | 1 | 5,505 |
| 1939 | 6,850 | 208 | 539 | 717 | 51 | | 7.3 | 2.4 | 1 | 8,375 |
| 1940 | 3,736 | 117 | 391 | 498 | 36 | | 3.6 | 2.7 | 1 | 4,784 |

¹ Grain exchanges fulfilling conditions of the Commodity Exchange Act respecting location, facilities, and rules and which have been designated "contract markets" by the Secretary of Agriculture. Trading in grain futures on exchanges in the United States is limited by the act to contract markets. Volume of trading at contract markets other than those tabulated is less than 1 million bushels in most years.

Source: Commodity Exchange Administration.

TABLE 14

UNITED STATES WHEAT EXPORTS BY CUSTOMS DISTRICTS

Exports of wheat from the United States, by customs districts, as reported by the Department of Commerce, in bushels. (Due to unspecified revisions in districts, the sum of the districts as given does not always agree with the total)

[000's omitted]

| From— | Fiscal years | | | | Calendar years | | | | | |
|-----------------|--------------|---------|---------|---------|----------------|-------|--------|--------|--------|--------|
| | 1936-37 | 1937-38 | 1938-39 | 1939-40 | 1935 | 1936 | 1937 | 1938 | 1939 | 1940 |
| Buffalo | | 2,316 | 1,539 | 350 | 4 | | 164 | 2,310 | 1,722 | |
| New York | 21 | 3,671 | 2,100 | 2,369 | 62 | 15 | 1,703 | 2,817 | 2,138 | 1,644 |
| Philadelphia | | 960 | 1,150 | | | | 816 | 746 | 878 | 175 |
| Maryland | 2 | 371 | 1,419 | 220 | | 2 | 101 | 625 | 1,125 | 159 |
| Mobile | 41 | 326 | | | | 21 | 41 | 306 | | |
| New Orleans | 123 | 2,776 | 6,426 | 2,965 | 38 | 33 | 1,121 | 6,148 | 4,493 | 851 |
| Sabine | | 4,534 | | 273 | 6 | | 577 | 3,957 | 273 | |
| Galveston | | 39,799 | 38,110 | 4,891 | 19 | 21 | 14,348 | 44,948 | 21,892 | 1,657 |
| San Antonio | | 2,468 | 1,217 | | | | 871 | 1,779 | 1,035 | |
| El Paso | 5 | 1 | | | 3 | 27 | 1 | 19 | | |
| Arizona | | 18 | 1 | | | | | | | 1 |
| San Francisco | 41 | 201 | 88 | 15 | 27 | 36 | 180 | 80 | 42 | 23 |
| Los Angeles | | 1 | | | | | 1 | | | |
| Oregon | 2,532 | 13,876 | 25,003 | 8,413 | 55 | 1,510 | 6,074 | 16,301 | 21,771 | 7,140 |
| Wisconsin | | 115 | | | | | 115 | | | |
| Washington | 239 | 1,986 | 4,603 | 2,360 | 12 | 172 | 1,361 | 2,069 | 5,107 | 2,597 |
| Montana, Idaho | 1 | 580 | 20 | | | 2 | 28 | 592 | | |
| Dakota | 1 | 335 | | | 7 | 14 | | 334 | | |
| Duluth-Superior | | 1,662 | 813 | 372 | | | 834 | 1,145 | 868 | 382 |
| Michigan | 3 | 30 | 12 | | | 3 | 13 | 23 | 6 | |
| Chicago | 133 | 5,198 | 1,735 | 1,398 | | | 4,268 | 2,448 | 1,748 | |
| San Diego | 4 | 117 | 93 | 9 | 1 | 3 | 59 | 144 | 17 | 49 |
| Florida | 1 | 5 | 2 | | | | 1 | 7 | | |
| Porto Rico | | | 7 | 1 | | | | 2 | 6 | 1 |
| Total | 3,168 | 83,740 | 84,539 | 28,636 | 233 | 1,879 | 34,848 | 86,980 | 63,214 | 14,379 |

UNITED STATES FLOUR EXPORTS BY CUSTOMS DISTRICTS

Exports of wheat flour from the United States, by customs districts, as reported by the Department of Commerce, in barrels

[000's omitted]

| From— | Fiscal years | | | | Calendar years | | | | | |
|----------------|--------------|---------|---------|---------|----------------|-------|-------|-------|-------|-------|
| | 1936-37 | 1937-38 | 1938-39 | 1939-40 | 1935 | 1936 | 1937 | 1938 | 1939 | 1940 |
| Massachusetts | 8 | 8 | 2 | 1 | 2 | | 7 | 6 | 3 | 3 |
| Buffalo | 149 | 103 | 203 | 161 | 128 | 143 | 790 | 163 | 238 | 85 |
| New York | 2,588 | 2,231 | 2,339 | 2,423 | 2,356 | 2,648 | 2,425 | 2,261 | 2,415 | 2,004 |
| Philadelphia | | 14 | | 3 | | | 6 | 8 | 1 | 1 |
| Maryland | 9 | 61 | 28 | 52 | 17 | 10 | 28 | 54 | 62 | 2 |
| Virginia | 12 | 26 | 23 | 15 | 12 | 12 | 12 | 35 | 23 | 1 |
| Florida | 5 | 3 | 6 | 4 | 1 | 6 | 4 | 7 | 2 | 8 |
| Mobile | 7 | 6 | 19 | 13 | 1 | 4 | 10 | 15 | 22 | 12 |
| New Orleans | 241 | 542 | 602 | 782 | 159 | 148 | 366 | 609 | 792 | 487 |
| Sabine | 6 | 40 | 14 | 24 | 10 | 3 | 30 | 17 | 26 | 18 |
| Galveston | 142 | 395 | 371 | 435 | 56 | 91 | 273 | 358 | 517 | 196 |
| San Antonio | | | | | 1 | | | | | |
| El Paso | | 6 | 5 | 5 | | | 3 | 4 | 4 | 13 |
| Los Angeles | 3 | | | 2 | 2 | 2 | 1 | | 1 | |
| San Francisco | 52 | 103 | 70 | 76 | 141 | 71 | 89 | 75 | 65 | 64 |
| Oregon | 182 | 320 | 1,398 | 1,050 | 78 | 120 | 204 | 546 | 1,753 | 1,207 |
| Washington | 531 | 1,135 | 1,877 | 1,469 | 369 | 387 | 854 | 1,110 | 1,860 | 1,674 |
| Montana, Idaho | | 6 | 2 | 1 | | | 2 | 6 | | |
| Michigan | | 13 | 1 | 1 | | | 7 | 7 | 1 | |
| Porto Rico | 2 | 8 | | | 12 | 8 | 6 | 3 | | |
| San Diego | 13 | 10 | | | 14 | 8 | 18 | | | |
| Virgin Islands | | | | 2 | | | | | | |
| Total | 3,919 | 4,900 | 6,637 | 6,519 | 3,297 | 3,660 | 4,453 | 5,213 | 7,747 | 5,775 |

90 TABLE 15.—Exports of wheat, including flour, from the United States, by country of destination, 1910-1940

[Million bushels]

| Year beginning July | Total exports ¹ | Total Europe | United Kingdom | Netherlands | France | Germany | Italy | Other Europe | Central and South America ² | China and Japan ³ | Philippine Islands | Other countries |
|---------------------|----------------------------|--------------|------------------|------------------|------------------|------------------|------------------|--------------|--|------------------------------|--------------------|-----------------|
| 1910..... | 71 | 41 | 24 | 5 | 4 | 2 | (⁴) | 6 | 9 | 10 | 1 | 10 |
| 1911..... | 82 | 48 | 27 | 7 | (⁴) | 2 | 1 | 8 | 11 | 15 | 1 | 10 |
| 1912..... | 145 | 105 | 43 | 19 | 5 | 13 | 7 | 18 | 11 | 15 | 2 | 12 |
| 1913..... | 148 | 107 | 41 | 24 | 6 | 12 | 3 | 22 | 11 | 15 | 1 | 14 |
| 1914..... | 236 | 203 | 85 | 40 | 60 | 3 | 48 | 47 | 14 | 4 | 1 | 17 |
| 1915..... | 248 | 206 | 96 | 22 | 35 | 0 | 36 | 44 | 20 | 3 | 2 | 17 |
| 1916..... | 306 | 179 | 82 | 22 | 23 | 0 | 18 | 34 | 14 | (⁴) | (⁴) | 13 |
| 1917..... | 133 | 120 | 60 | (⁴) | 26 | 0 | 22 | 18 | 6 | (⁴) | (⁴) | 13 |
| 1918..... | 267 | 250 | 115 | 9 | 31 | 0 | 43 | 52 | 7 | (⁴) | (⁴) | 30 |
| 1919..... | 222 | 187 | 82 | 1 | 40 | 2 | 30 | 43 | 12 | 1 | (⁴) | 21 |
| 1920..... | 360 | 221 | 105 | 27 | 24 | 35 | 59 | 73 | 17 | 2 | 1 | 21 |
| 1921..... | 283 | 201 | 94 | 24 | 6 | 29 | 26 | 42 | 15 | 25 | 2 | 42 |
| 1922..... | 225 | 145 | 37 | 17 | 15 | 13 | 34 | 30 | 12 | 20 | 2 | 42 |
| 1923..... | 160 | 70 | 24 | 13 | 2 | 9 | 9 | 13 | 14 | 64 | 3 | 26 |
| 1924..... | 281 | 170 | 85 | 25 | 14 | 17 | 26 | 36 | 14 | 8 | 3 | 26 |
| 1925..... | 108 | 69 | 30 | 7 | 1 | 3 | 3 | 15 | 15 | 11 | 3 | 30 |
| 1926..... | 219 | 160 | 47 | 25 | 16 | 11 | 10 | 31 | 20 | 14 | 3 | 42 |
| 1927..... | 308 | 113 | 42 | 19 | 5 | 6 | 11 | 26 | 17 | 15 | 3 | 38 |
| 1928..... | 164 | 94 | 20 | 10 | 2 | 3 | 5 | 24 | 21 | 18 | 4 | 57 |
| 1929..... | 153 | 79 | 31 | 11 | 2 | 7 | 1 | 27 | 21 | 30 | 3 | 30 |
| 1930..... | 131 | 73 | 24 | 13 | 8 | 3 | 4 | 21 | 17 | 16 | 3 | 23 |
| 1931..... | 136 | 96 | 19 | 10 | 6 | 4 | 2 | 37 | 23 | 26 | 3 | 14 |
| 1932..... | 41 | 14 | 3 | 1 | 1 | (⁴) | 1 | 9 | 15 | 3 | 3 | 6 |
| 1933..... | 27 | 6 | 1 | (⁴) | (⁴) | (⁴) | (⁴) | 3 | 7 | 16 | 2 | 6 |
| 1934..... | 22 | 4 | 1 | (⁴) | (⁴) | (⁴) | (⁴) | 3 | 7 | 3 | 2 | 6 |
| 1935..... | 16 | 3 | (⁴) | 1 | (⁴) | (⁴) | (⁴) | 1 | 7 | (⁴) | 1 | 6 |
| 1936..... | 22 | 5 | (⁴) | 3 | (⁴) | (⁴) | (⁴) | 2 | 8 | (⁴) | 2 | 7 |
| 1937..... | 107 | 73 | 24 | 14 | 1 | 1 | 1 | 22 | 12 | 3 | 3 | 17 |
| 1938..... | 116 | 77 | 30 | 18 | 1 | 3 | 1 | 24 | 11 | 14 | 3 | 9 |
| 1939..... | 54 | 27 | 4 | 8 | (⁴) | (⁴) | (⁴) | 15 | 9 | 6 | 5 | 7 |
| 1940..... | 41 | | | | | | | | | | | |

¹ Includes flour milled from Canadian wheat imported for milling in bond and export.² Includes Mexico, Panama, Cuba, Brazil, Chile, Peru, and Venezuela for all years, and Haiti and Colombia from 1931 to 1939.³ Includes Hong Kong, Kwantung, and Chosen.⁴ Less than 500,000 bushels.⁵ Data by countries not available.

98 TABLE 16.—Wheat, including flour in terms of grain: International Trade, averages 1925-34, annual 1937-39
[1,000 bushels]

| Country | Year beginning July— | | | | | | | | | | |
|-------------------------------------|---------------------------------|----------|--------------------|----------|----------|----------|----------|----------|-------------------|----------|---|
| | Average 1925-29 ¹ | | Average 1930-34 | | 1937 | | 1938 | | 1939 ² | | |
| | Ex-ports | Im-ports | Ex-ports | Im-ports | Ex-ports | Im-ports | Ex-ports | Im-ports | Ex-ports | Im-ports | |
| Principal exporting countries | | | | | | | | | | | |
| Canada | 307,640 | 796 | 220,491 | 387 | 94,546 | 5,547 | 159,885 | 2,489 | 210,212 | 353 | |
| United States ³ | 170,077 | 15,815 | 73,403 | 15,591 | 100,090 | 634 | 106,645 | 271 | 44,908 | 263 | |
| Argentina | 159,377 | 10,143 | 537 | 0 | 69,670 | 0 | 116,116 | 0 | 177,561 | 0 | |
| Australia | 83,298 | 3,128 | 363 | 3 | 123,454 | 2 | 96,423 | 1 | 80,167 | 0 | |
| Hungary | 23,529 | 8 | 17,123 | 1 | 9,102 | 0 | 27,875 | 0 | 40,358 | 0 | |
| Union of Soviet Socialist Republics | 17,731 | 0 | 48,272 | 1,503 | 43,354 | 4,807 | | | | | |
| Yugoslavia | 10,822 | 5 | 5,421 | 2 | 8 | 5,011 | 0 | 5,352 | 0 | 6,687 | 0 |
| British India | 10,060 | 8,636 | 4,129 | 3,075 | 19,677 | 1,203 | 10,097 | 7,248 | 2,368 | 1,345 | |
| Rumania | 6,528 | 79 | 11,482 | 15 | 32,259 | 0 | 42,863 | 0 | 34,138 | 0 | |
| Algeria | 5,153 | 1,737 | 11,022 | 1,511 | 7,590 | 1,078 | 3,546 | 1,495 | | | |
| Tunisia | 3,518 | 969 | 5,924 | 864 | 5,251 | 289 | 4,568 | 592 | | | |
| Bulgaria | 1,899 | 1,804 | 4,919 | 0 | 8,499 | 0 | 2,633 | 0 | 3,988 | 0 | |
| Poland | 1,407 | 4,820 | 3,224 | 809 | 754 | 401 | 3,086 | 109 | | | |
| Chile | 925 | 456 | 703 | 956 | 1 | 96 | 5 | 224 | | | |
| Total | 801,934 | 34,838 | 678,013 | 24,423 | 519,208 | 14,057 | 579,094 | 12,429 | 600,341 | 1,961 | |
| 99 | | | | | | | | | | | |
| United Kingdom | 11,369 | 215,665 | 9,461 | 229,584 | 4,469 | 197,509 | 5,454 | 224,804 | 947 | 49,190 | |
| Germany | 11,527 | 85,668 | 14,902 | 28,368 | 187 | 46,206 | 254 | 37,452 | | | |
| Italy | 2,014 | 76,212 | 6,680 | 36,469 | 8,441 | 10,826 | 3,471 | 78,427 | 168 | 2,642 | |
| France | 4,170 | 46,574 | 20,454 | 53,674 | 4,214 | 19,483 | 16,748 | 17,978 | | | |
| Belgium | 2,452 | 43,482 | 3,855 | 47,186 | 4,616 | 40,927 | 3,726 | 42,986 | 664 | 21,981 | |
| Brazil | 0 | 32,839 | 0 | 32,026 | 0 | 36,545 | 0 | 39,578 | 0 | 34,261 | |
| Netherlands | 943 | 30,050 | 1,240 | 28,488 | 705 | 24,318 | 46 | 28,947 | 12 | 22,505 | |
| China | 1,862 | 23,486 | 1,130 | 42,162 | 32 | 7,702 | 3,130 | 28,269 | 2,782 | 22,153 | |
| Manchuria | | | | | 1,115 | 1,680 | 0 | 12,170 | 0 | 10,621 | |
| Japan | 5,989 | 23,158 | 11,970 | 21,740 | 13,275 | 4,693 | 10,491 | 1,283 | 9,054 | 2,139 | |
| Greece | 0 | 20,055 | 0 | 18,583 | 0 | 17,863 | 0 | 13,547 | 0 | 12,511 | |
| Czechoslovakia | 418 | 18,604 | 3,186 | 11,289 | 5,086 | 3,925 | 2,490 | 1,785 | | | |
| Ireland | 74 | 18,502 | 0 | 18,817 | 0 | 14,067 | 0 | 17,182 | 0 | 2,135 | |
| Switzerland | 0 | 16,461 | 15 | 18,787 | 8 | 14,357 | 1 | 17,026 | 0 | 11,030 | |
| Austria | 116 | 16,275 | 101 | 12,984 | 41 | 2,510 | 7 | 4,327 | | | |
| Egypt | 162 | 10,448 | 40 | 4,098 | 833 | 222 | 20 | 221 | 439 | 171 | |
| Denmark | 524 | 10,102 | 76 | 14,513 | 477 | 6,908 | 152 | 3,496 | 105 | 3,225 | |
| Sweden | 2,004 | 9,662 | 651 | 3,815 | 2,424 | 1,988 | 333 | 1,988 | 15 | 474 | |
| Norway | 0 | 6,964 | 0 | 8,529 | 0 | 6,994 | 0 | 8,012 | 0 | 11,032 | |
| Union of So. Africa | 253 | 6,317 | 193 | 1,418 | 197 | 357 | 206 | 2,328 | 214 | 344 | |
| Cuba ⁴ | 0 | 5,705 | 0 | 4,154 | 0 | 4,796 | 0 | 4,661 | 9 | 4,821 | |
| Finland | 0 | 5,390 | 0 | 4,302 | 0 | 3,071 | 0 | 2,261 | 0 | 234 | |
| Spain | 526 | 5,189 | 65 | 2,163 | | | | | | | |
| Peru | 10 | 3,387 | 3 | 3,644 | 0 | 4,638 | 0 | 4,827 | 0 | 4,708 | |
| Netherlands Indies ⁵ | 0 | 3,328 | 0 | 3,445 | 0 | 3,883 | 2 | 4,320 | 0 | 3,596 | |
| Syria and Lebanon | 14 | 2,710 | 699 | 1,370 | 78 | 1,054 | 1,680 | 604 | 43 | 0 | |
| Latvia | 17 | 2,027 | 133 | 606 | 36 | 986 | 0 | 492 | 0 | 0 | |
| New Zealand | 45 | 1,658 | 202 | 970 | 1 | 4,064 | 1 | 3,258 | 0 | 1,220 | |
| Palestine | 197 | 1,138 | 17 | 2,145 | 41 | 1,830 | 0 | 3,907 | 9 | 2,558 | |
| Indo-China | 0 | 1,177 | 0 | 868 | 0 | 1,004 | 0 | 1,486 | 0 | 590 | |
| Estonia | 0 | 1,062 | 198 | 281 | 61 | 187 | 0 | 19 | 0 | 0 | |
| Total | 44,576 | 742,925 | 73,271 | 656,930 | 43,340 | 489,323 | 49,212 | 549,641 | 14,463 | 224,555 | |

¹ Preliminary. For many countries data are for few months only and so are not comparable to earlier years.

² Not full 5-year average.

³ Calendar year basis.

⁴ Averages for 1925-29 and 1930-34 comprise exports of domestic wheat and all flour; imports comprise all wheat (including for milling in bond and export) and all flour. Annual 1937-39, exports comprise domestic wheat and flour made from "wholly United States wheat"; imports for consumption comprise "wheat unfit for human consumption," "wheat other" (62 cents dutiable), and all wheat flour except flour "imported in bond for export."

⁵ Included with China.

Source: Bureau of Agricultural Economics.

WHEAT SUPPLY, DEMAND, AND PRICE

A unique description of the relationship of supply, demand, and price is pictured in Chart 4 showing a balance scale with supply, made up of production and carry-over, on one end of the scale and use at home and abroad plus a reserve at the other end of the scale. When the scale balances between this supply and demand, the indicator points to fair prices for both the farmer and the consumer. However, as the "use at home and abroad" becomes larger than the supply, the indicator points to a price which results in an excessive cost for consumers and unusually high prices for wheat farmers. If, on the other hand, the supply far outweighs the "use at home and abroad" plus a reasonable reserve, the indicator points to a ruinous price for the wheat farmer. This balance of supply and demand applies to the world wheat situation if there are few restraints on the movement of wheat in international trade, but the more restraints on international trade, the more this balance will apply to the wheat situation in an individual country if there are no artificial measures influencing the relationship between supply, demand, and price. A large world supply means a low world price and a small world supply results in a high world price as shown in Chart 5 and Table 17, which show the relationship between world supply and price from 1923 to 1940.

The production in one part of the world affects the market for wheat produced in other countries. This is illustrated in 101 Chart 6 and Table 18 which show that the increase in production in Europe from 1923 to 1939 has been accompanied by a decrease in world shipments of wheat to Europe as well as a decrease in United States net exports during the same period. United States exports have decreased steadily since 1926 except during the year 1937, and also in 1938 when exports were obtained by means of an export subsidy. As an indication of the inter-relationship of world wheat prices, Chart 7 presents the price of wheat in Liverpool and the price of No. 2 Hard Winter wheat at Kansas City. These prices practically always move in the same direction, with Kansas City usually below Liverpool except during the periods of short United States supplies such as from 1933 to 1936. When, as shown in Chart 7, the United States supply available for export and carry-over was short, the price at Kansas City was above that at Liverpool.

The trend of world wheat production has been upward since 1923 as shown in Chart 8 and Table 19. The increase has been

general, largely as a result of increased acreage in both importing and exporting countries.

Human consumption of wheat in the United States as well as in the entire World varies less than that of most commodities, due largely to the importance of bread in diet and the relatively inelastic demand for it. Statistics on the amount of wheat used only for human consumption are not available, but in the United States

the consumption of wheat for food and commercial feeds 102 (practically all of which is for food) has varied only from 474 to 544 million bushels during the 17-year period 1923-24 to 1939-40, while the yearly average price of No. 2 Hard Winter wheat at Chicago has varied from 53 cents to \$1.61 a bushel. In percentage terms, consumption varied from 95 to 109 percent of the average, while price varied from 50 to 152 percent of the average for the period. Monthly or daily average prices would show even greater variation. An analysis of the factors affecting flour consumption in the United States indicates that the demand for flour is so inelastic that a rise in flour prices of as much as 20 percent would result in a decrease in consumption of about 3 percent.

The amount of wheat used for seed is also rather constant and varies only with changes in seeded acreage from year to year or with changes in farming practices regarding the amount of wheat per acre used in the seeding operation. The amount of wheat used for seed has averaged 83 million bushels for the 17-year period 1923-24 to 1939-40, varying from a low of 73 million bushels in 1939-40 to a high of 97 million bushels in 1936-37.

The disappearance of, as well as the demand for, wheat for livestock feed fluctuates much more than the other uses for wheat. It fluctuates with changes in livestock prices and relationship between prices of alternative feeds and the price of wheat. The amount of wheat fed to livestock also increases in years in which

the production of low grade wheat is large, because other 103 opportunities for marketing low grade wheat are usually limited or unattractive. Wheat fed on farms where grown averaged 86 million bushels in the same 17-year period mentioned above, with variations from 28 million bushels in 1925-26 to 174 million bushels in 1931-32.

The supply and utilization of wheat in the United States and the carry-over from one marketing year to the next are shown in Charts 9 and 10 and accompanying Table 20.

World wheat prices declined in the period 1924 to 1933 with the increase in world supplies (see Chart 5). The sharp decline in prices after 1929 was caused by the general decline in industrial activity and commodity prices as well as the increase in supplies. From the spring of 1933 to the summer of 1937, world

wheat prices moved upward, reflecting world-wide recovery in commodity price levels, currency depreciation, and reduced production. In 1938, world prices again declined sharply as a result of record world production and weakness in demand. Prices in 1939-40 remained low but averaged higher than a year earlier, influenced by general expectations of increased demand for wheat as a result of the war, and by poor crop prospects in Argentina and the United States. In 1940-41 large supplies in surplus countries and reduced trade held world wheat prices to low levels.

The price of wheat in the United States depends not only on the supply of wheat in this country, but also on the world supply and demand situation, the general level of United States
104 and world prices for all commodities, and the operation of any governmental price-supporting or price-depressing regulations in this country or in foreign countries. The actual price at any one time is also influenced somewhat by the attitude of those operating in market trading.

Domestic wheat prices up to 1933 followed in general the trend of world wheat prices (see Chart 7). However, from the spring of 1933 to the spring of 1937 domestic wheat prices were unusually high in relation to world prices as the result of small crops in the United States. In 1937 United States production was large and prices declined. In 1938, with domestic production again large, with a record world crop, and with somewhat lower commodity prices generally, prices again declined, and would have averaged still lower had it not been for the United States loan and export-subsidy programs which held domestic prices above export parity.

Prices received by growers for wheat during the year beginning July 1939, averaging 69 cents, continued relatively high compared with the usual relationship to prices in other countries, as a result of only a moderately large carry-over, reduced acreage, poor prospects for 1940 yields, and holding of wheat in expectation of higher prices.

Prices advanced sharply in September 1939, following the outbreak of the European war, and again in December, influenced by war developments and by poor crop prospects in Argentina and the United States. In the middle of May 1940, fol-
105 lowing the turn of events in Europe, selling became heavy and most of the gains were lost. From the middle of May until the middle of August prices declined seasonally, then they advanced until the middle of November. After declining to the middle of February 1941 they again rose, and in July 1941 were at about the highest levels since May 1940.

Parity price of wheat is that price which will give to wheat a purchasing power of articles that farmers buy equivalent to the purchasing power of wheat in the base period, 1909 to 1914, when the average farm price of wheat was 88.4 cents a bushel. Average parity price for any year is computed by multiplying 88.4 cents by the average index of prices paid by farmers during such year, including interest and taxes, and dividing by 100. Because the index is based on so many commodities, parity price fluctuates slowly. Chart 11 and Table 21 show that since 1923-24 the average farm price of wheat has been considerably below parity price.

All classes of wheat in the United States compete, whether it is Soft Red Winter wheat grown east of the Mississippi River, Hard Red Winter wheat grown in the central and southern Great Plains, Hard Red Spring and Durum wheat grown in the northern Great Plains, or White wheat grown on the Pacific Coast. The fact that these wheats are very closely related in the market is indicated by Charts 12, 13, and 14, which present a comparison between the price of No. 2 Hard Winter wheat at Kansas City and No. 2 Red Winter wheat at St. Louis, No. 1 White 106 wheat at Seattle, and No. 1 Dark Northern Spring and No. 2 Hard Amber Durum wheat at Minneapolis. As shown

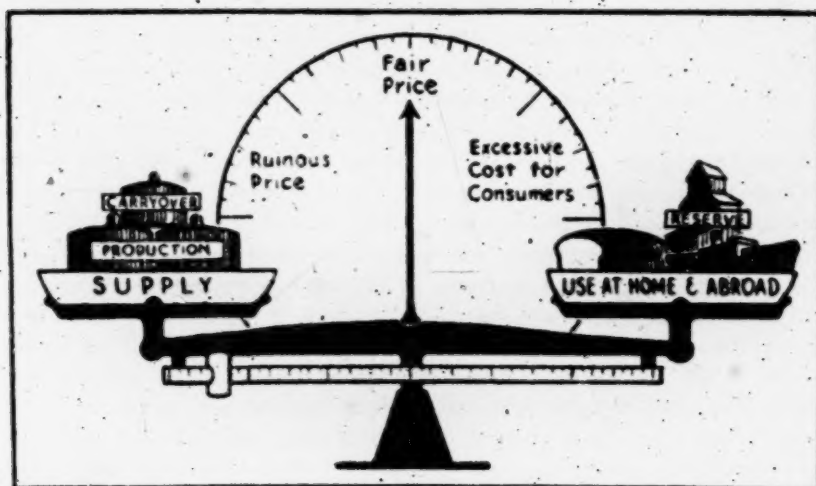
in these charts, movement of prices of the different classes of wheat in the different areas is closely related because of the possibility of some amount of substitution in certain uses and the availability of price information in all trading centers. If the price in one market is high relative to that in other markets, the wheat will move to the market with the favorable price. However, in order to show the supply and price for the individual classes of wheat, Charts 15 to 19 with their accompanying data, Tables 22 to 26, are presented.

Inasmuch as farmers individually cannot protect themselves from the disastrous price that always accompanies large surplus supplies, wheat farmers in this and other countries have requested governmental programs to attempt to regulate wheat marketing and price in a manner somewhat similar to that used by industry for some time. It has been particularly necessary to develop this type of wheat program in the four large exporting countries of Argentina, Australia, Canada, and the United States because of mounting surpluses and reduced demand. During the past marketing year there were 1,100 million bushels of wheat available in the world for export and a world market for only about 450 million bushels. As for this country, during

the 1920's exports of domestic wheat averaged about 195 million bushels but during 1940-41 they dropped to about 35 million bushels. Finally, a comparison may be made between the average return of 86 cents a bushel obtained by the wheat farmer in 1940-41 cooperating with the AAA wheat program and a return of approximately 40 cents a bushel that he would have obtained on the world market. Last year the average return to cooperators consisted of an average farm price of 68 cents a bushel and conservation and parity payments of 18 cents a bushel. For the 1941 crop, the wheat conservation and parity payments again amount to 18 cents a bushel but the loan has been raised to 85 percent of parity and is estimated to average about 98 cents a bushel. Consequently, during 1941 cooperators in the wheat program will receive an average price on the farm approximating parity or about \$1.16 a bushel, as compared with a price of about 40 cents a bushel if the wheat were sold on the basis of a world market. Just before the Liverpool market was closed by the outbreak of the present war in September 1939, the world price was the lowest in 350 years. Farmers in countries trying to sell on the world market must take the world price for their wheat unless they have domestic price protection.

Quotations in August 1941, indicate that in order to export wheat to Europe from Galveston it would require a subsidy of about 50 cents a bushel, and from the Pacific Coast about 36 cents a bushel. A comparison at Buffalo of the price of Canadian wheat and United States wheat indicates that were it not for import quotas on wheat produced in Canada and other countries, proclaimed by the President on May 28, 1941, this country might be flooded with wheat from the huge surplus in Canada. On August 20, 1941, in spite of a 42 cent tariff, the price of our wheat was 5 cents higher than that of Canadian wheat of comparable quality in Buffalo. Canada's 1940 wheat crop of 550 million bushels was its second largest on record, and with storage facilities congested, presented serious difficulties in handling.

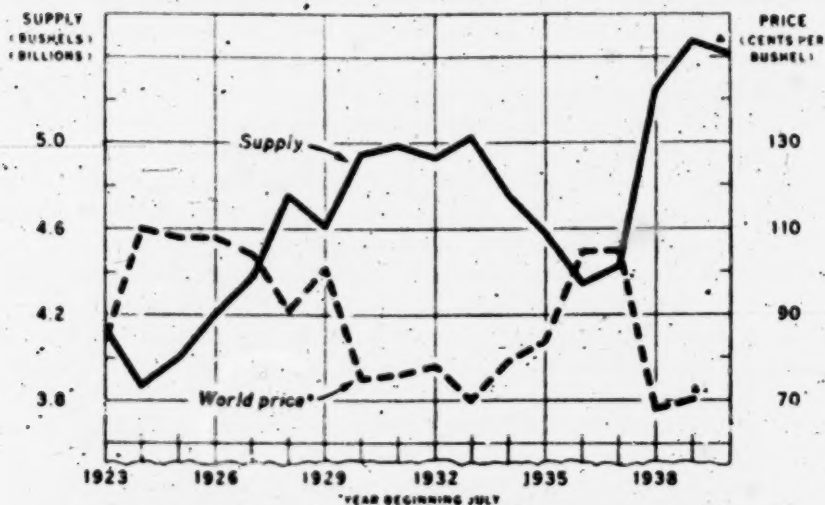
Chart 4



Wheat

Chart 5

WHEAT: WORLD SUPPLY AND PRICE, 1923-40



* AVERAGE BRITISH PARCELS DEFLATED BY STATIST. INDEX NUMBERS (1910-14=100).
 PRICES SINCE SEPT. 1, 1939 COMPUTED ON BASIS OF PRICES IN EXPORTING COUNTRIES
 AND CONVISED OCEAN FREIGHT RATES

* PRELIMINARY

DEC. 20/40

With world wheat supplies for the 1940-41 year likely to be only moderately smaller than supplies a year earlier, world prices may be expected to remain at low levels. The closing of most Continental markets to exporting countries is also a depressing factor.

TABLE 17.—Wheat: Estimated world supply, disappearance and prices, 1922-40

| Year beginning July | Stocks about July 1 ¹ | Production ² | | | | | Net exports from U. S. S. R. | Total supply ³ | Total disappearance ⁴ | British parcels, average price per bushel ⁵ |
|---------------------|----------------------------------|-------------------------|----------------------------------|-------------------------------|-----------|--------------------|------------------------------|---------------------------|----------------------------------|--|
| | | United States | Canada, Argentina, and Australia | Europe, excluding U. S. S. R. | All other | World ¹ | | | | |
| | Mil. bu. | Mil. bu. | Mil. bu. | Mil. bu. | Mil. bu. | Mil. bu. | Mil. bu. | Mil. bu. | Mil. bu. | Cents |
| 1922 | 647 | 847 | 705 | 1,050 | 616 | 3,218 | 1 | 3,865 | 3,289 | 92 |
| 1923 | 577 | 759 | 847 | 1,263 | 666 | 3,535 | 21 | 4,132 | 3,410 | 84 |
| 1924 | 723 | 842 | 619 | 1,064 | 618 | 3,143 | | 3,866 | 3,293 | 110 |
| 1925 | 573 | 669 | 701 | 1,404 | 622 | 3,396 | 27 | 3,966 | 3,343 | 108 |
| 1926 | 653 | 832 | 798 | 1,215 | 650 | 3,504 | 49 | 4,206 | 3,519 | 108 |
| 1927 | 687 | 875 | 880 | 1,275 | 673 | 3,683 | 5 | 4,375 | 3,624 | 104 |
| 1928 | 751 | 914 | 1,076 | 1,400 | 606 | 4,006 | | 4,756 | 3,736 | 91 |
| 1929 | 1,020 | 823 | 595 | 1,440 | 715 | 3,592 | 7 | 4,609 | 3,666 | 101 |
| 1930 | 943 | 886 | 967 | 1,360 | 781 | 3,894 | 112 | 4,949 | 3,903 | 75 |
| 1931 | 1,046 | 942 | 732 | 1,436 | 767 | 3,877 | 70 | 4,963 | 3,950 | 76 |
| 1932 | 1,043 | 757 | 898 | 1,490 | 731 | 3,876 | 17 | 4,936 | 3,792 | 78 |
| 1933 | 1,144 | 552 | 745 | 1,746 | 806 | 3,848 | 34 | 5,026 | 3,833 | 70 |
| 1934 | 1,193 | 526 | 650 | 1,548 | 837 | 3,561 | 2 | 4,756 | 3,804 | 79 |
| 1935 | 952 | 626 | 568 | 1,576 | 832 | 3,602 | 29 | 4,583 | 3,816 | 84 |
| 1936 | 767 | 627 | 620 | 1,481 | 826 | 3,594 | 4 | 4,355 | 3,816 | 105 |
| 1937 | 519 | 876 | 552 | 1,539 | 885 | 3,852 | 39 | 4,410 | 3,811 | 105 |
| 1938 ⁶ | 599 | 812 | 851 | 1,859 | 963 | 4,605 | 37 | 5,241 | 4,066 | 68 |
| 1939 ⁷ | 1,205 | 755 | 815 | 1,719 | 978 | 4,270 | -2 | 5,473 | 4,053 | 70 |
| 1940 ⁸ | 1,420 | | | | | | | | | |

¹ Excludes U. S. S. R. and China. 1922-36 stocks in United States contained some new wheat; 1937-39 new wheat, in million bushels, deducted in United States stocks as follows: 20 in 1937 and 1938, 41 in 1939, and 14 in 1940.

² Year of harvest. Harvests of the Northern Hemisphere countries are combined with those of the Southern Hemisphere which immediately follow; thus the crop harvested in the Northern Hemisphere countries in 1939 is combined with the Southern Hemisphere harvest which begins late in 1939 and ends early in 1940.

³ Excludes production and stocks in U. S. S. R. and China but includes net exports from U. S. S. R.

⁴ Deflated by Statistical Index (1910-14=100) and converted at par.

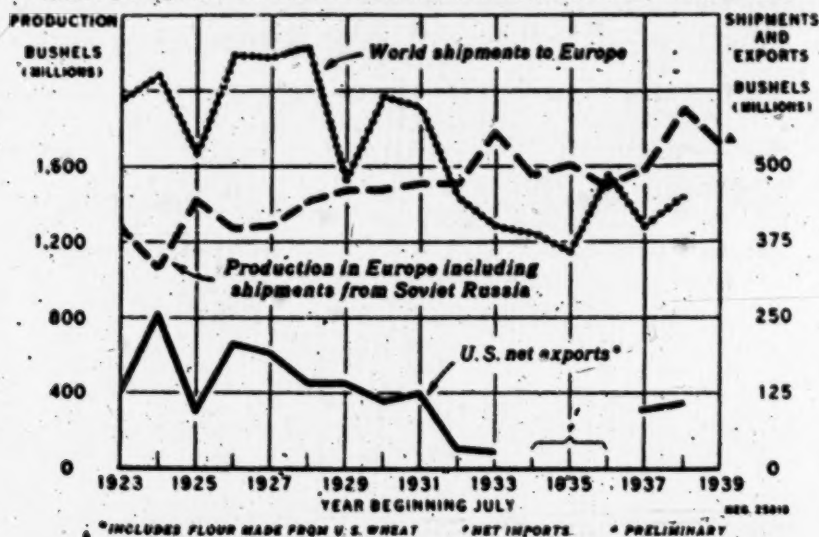
⁵ Preliminary

⁶ Prices since September 2, 1939 computed on basis of prices in exporting countries and conveyed ocean freight rates.

⁷ Production and export figures from official sources. Prices compiled from daily prices in the London Grain, Seed and Oil Reporter.

⁸ Preliminary

WHEAT: U. S. NET EXPORTS, WORLD SHIPMENTS TO EUROPE, AND PRODUCTION IN EUROPE, 1923-39



Production in Europe (excluding shipments from Soviet Russia) has shown a marked upward trend while world shipments to Europe and the United States net exports to Europe have declined.

TABLE 18.—Wheat: United States net exports, world shipments to Europe, and production in Europe, 1923-38.

| Year beginning July | World shipments to Europe | United States net exports ¹ | Production in Europe, including shipments from Soviet Russia |
|---------------------|---------------------------|--|--|
| | Million bushels | Million bushels | Million bushels |
| 1923 | 612 | 131 | 1,284 |
| 1924 | 682 | 355 | 1,064 |
| 1925 | 529 | 93 | 1,431 |
| 1926 | 684 | 306 | 1,264 |
| 1927 | 655 | 191 | 1,280 |
| 1928 | 686 | 141 | 1,409 |
| 1929 | 476 | 140 | 1,450 |
| 1930 | 615 | 112 | 1,472 |
| 1931 | 508 | 123 | 1,506 |
| 1932 | 440 | 32 | 1,507 |
| 1933 | 402 | 25 | 1,780 |
| 1934 | 388 | 4 | 1,530 |
| 1935 | 380 | 30 | 1,965 |
| 1936 | 485 | 25 | 1,485 |
| 1937 | 398 | 99 | 1,578 |
| 1938 | 451 | 106 | 1,806 |
| 1939 | | | 1,713 |

¹ Includes flour; excludes wheat imports for milling in bond and export as flour, or flour admitted free for export.

² Net imports.

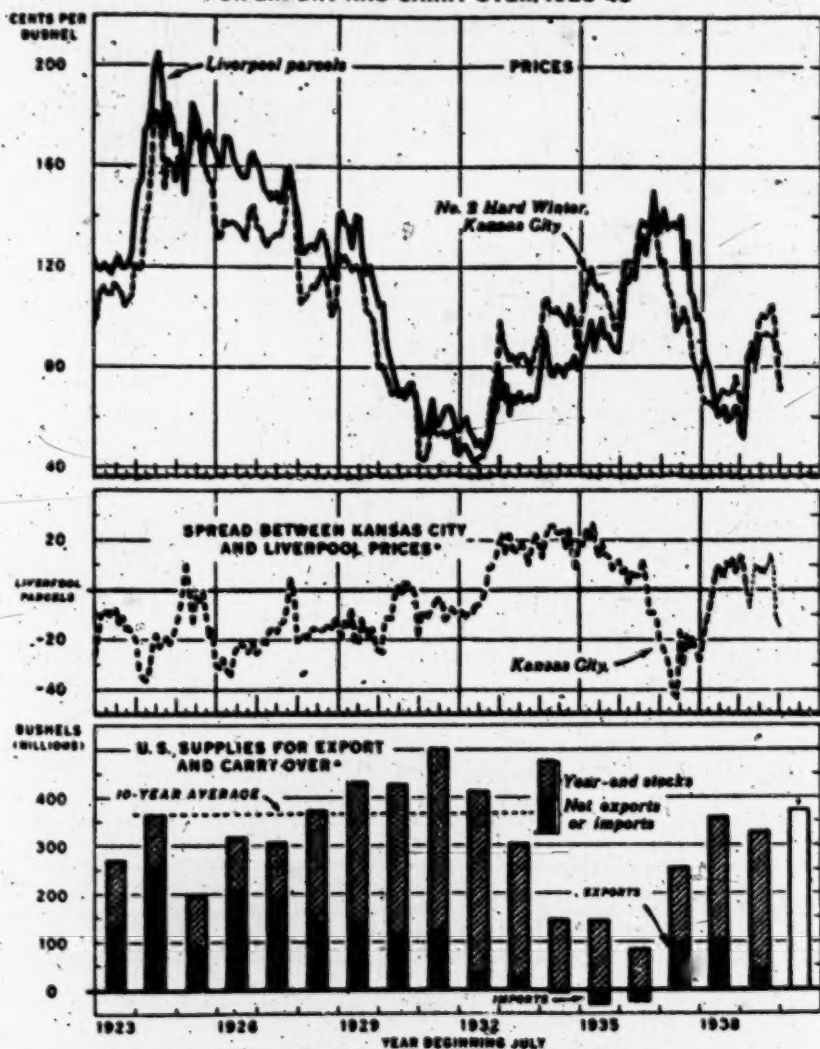
³ Preliminary.

Shipments reported in Broomhall's Corn Trade News. Exports and production from official sources.

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Chart 7

WHEAT: PRICES AT KANSAS CITY AND LIVERPOOL, AND U.S. SUPPLIES FOR EXPORT AND CARRY-OVER, 1923-40



* LIVERPOOL PRICES SINCE SEPT. 8, 1923, WHEN LIVERPOOL MARKET CLOSED COMPUTED ON BASIS OF PRICES IN EXPORTING COUNTRIES AND COMPUTED OCEAN FREIGHT DATES.

* CARRY-OVER PLUS STOCKS LESS DOMESTIC UTILIZATION

* PROBABILITIES

DEC. 1939

The prospective supply for export and carry-over for 1940-41 United States is close to the 1924-33 average. With the likelihood that very large quantities of wheat will be stored, domestic wheat prices may be expected to continue higher relative to values at Liverpool than they were during the 1924-33 period.

During the 1934-36 period world wheat yields were considerably below average and production small. In more recent years large crops have resulted not only from large acreages but high yields as well. A small reduction in acreage took place in 1941.

WHEAT: ACREAGE, YIELD, AND PRODUCTION, WORLD
(EXCLUDING U.S.S.R. AND CHINA), 1923-40

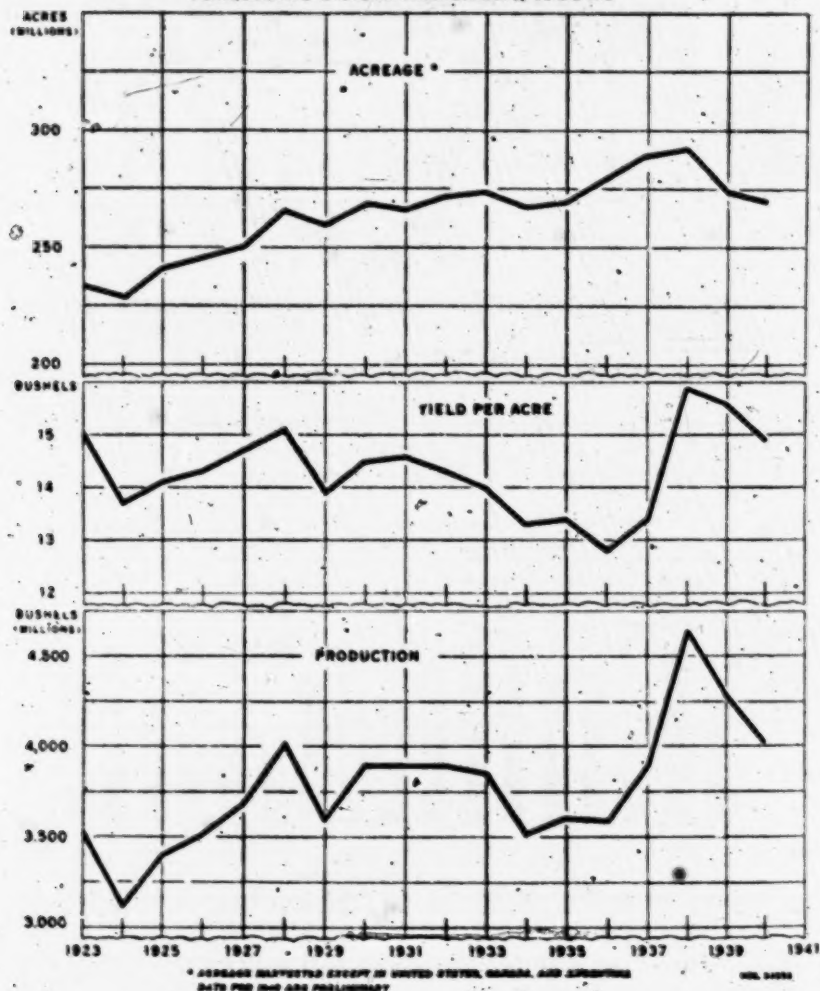


TABLE 19.—Wheat: Estimated acreage, yield, and production, world (excluding U. S. S. R. and China), 1923-40

| Year of harvest | Acreage | Yield per acre | Production | Year of harvest | Acreage | Yield per acre | Production |
|-----------------|----------------------|----------------|------------------------|-------------------------|----------------------|----------------|------------------------|
| | <i>Million acres</i> | <i>Bushels</i> | <i>Million bushels</i> | | <i>Million acres</i> | <i>Bushels</i> | <i>Million bushels</i> |
| 1923..... | 236 | 15.0 | 3,535 | 1932..... | 272 | 15.3 | 3,876 |
| 1924..... | 229 | 13.7 | 3,143 | 1933..... | 274 | 14.0 | 3,848 |
| 1925..... | 241 | 14.1 | 3,396 | 1934..... | 267 | 13.3 | 3,561 |
| 1926..... | 245 | 14.3 | 3,504 | 1935..... | 269 | 13.4 | 3,602 |
| 1927..... | 250 | 14.7 | 3,683 | 1936..... | 279 | 12.8 | 3,584 |
| 1928..... | 266 | 15.1 | 4,003 | 1937 ¹ | 269 | 13.4 | 3,879 |
| 1929..... | 259 | 13.8 | 3,582 | 1938 ¹ | 292 | 15.9 | 4,638 |
| 1930..... | 268 | 14.5 | 3,894 | 1939 ¹ | 274 | 15.6 | 4,286 |
| 1931..... | 266 | 14.6 | 3,877 | 1940 ¹ | 270 | 14.9 | 4,017 |

¹ Refers to year of harvest in Northern Hemisphere, although it includes data for the Southern Hemisphere where the harvest ends early the following year.

² Acreage harvested except the United States, Canada, and Argentina.

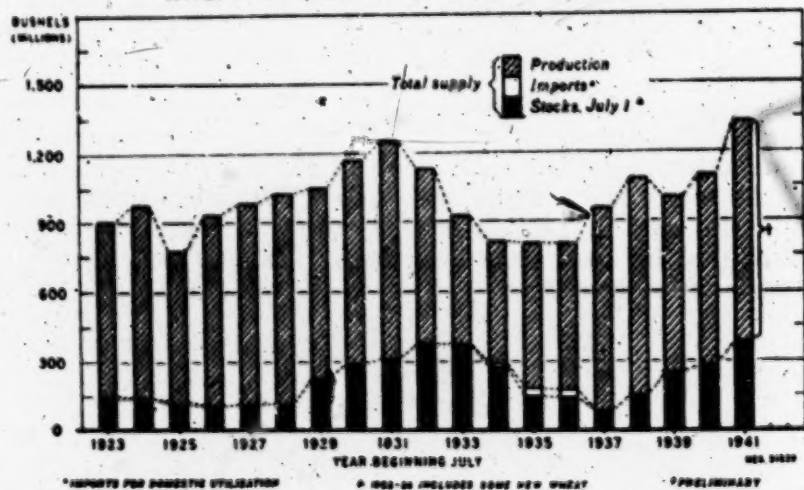
³ Preliminary.

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Chart 9

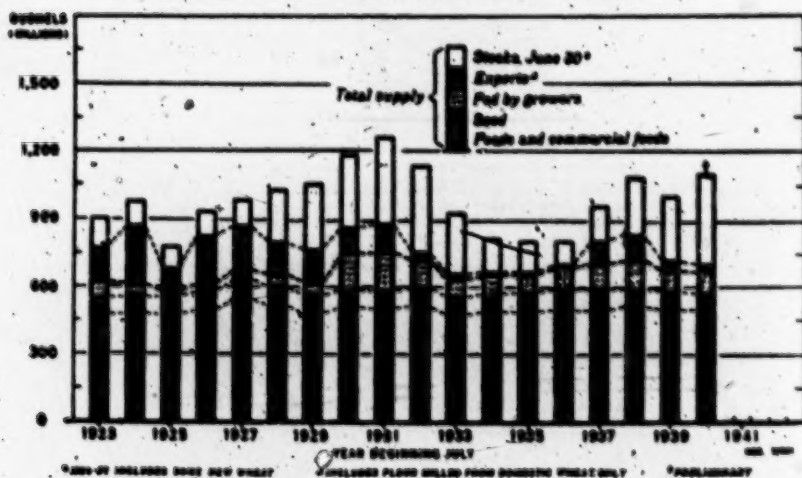
WHEAT: SOURCES OF U. S. SUPPLY, 1923-41



*Total 1941 supplies in the United States are the largest on record. The United States began its 1941-42 marketing year with the largest carry-over and the second largest crop in its history.

Chart 10

WHEAT: DISTRIBUTION OF U. S. SUPPLY, 1923-40



The quantity of wheat used domestically and exported in 1940-41 was about the same as in 1939-40. The carry-over on June 30, 1941, however, was increased by about 100 million bushels, chiefly as the result of the large 1940 crop. The quantity for use as feed and seed in 1941-42 is expected to be somewhat reduced while that for food about unchanged. Exports are expected to remain at low levels.

115 TABLE 20.—Wheat: Supply and distribution in continental United States, 1923-41

SUPPLY

| Year beginning July | Stocks July 1 | | | | | New crop | Imports (four included) ¹ | Total supply |
|--|---------------|--------------------------------|--------------------------------|--|---------------|---------------|--------------------------------------|---------------|
| | On farms | In country elevators and mills | Commercial stocks ¹ | In merchant mills and elevators and stored for others ¹ | Total | | | |
| With new wheat in commercial and merchant mill stocks: | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels |
| 1923 | 35,280 | 37,117 | 28,986 | 31,000 | 132,312 | 750,682 | 14,578 | 906,572 |
| 1924 | 26,340 | 36,636 | 36,112 | 23,000 | 137,087 | 841,617 | 304 | 979,006 |
| 1925 | 26,628 | 25,267 | 28,930 | 23,576 | 106,401 | 686,700 | 1,747 | 778,946 |
| 1926 | 27,071 | 26,601 | 16,145 | 27,803 | 100,223 | 832,213 | 77 | 932,513 |
| 1927 | 26,640 | 31,776 | 21,052 | 40,036 | 109,506 | 875,000 | 186 | 984,732 |
| 1928 | 19,889 | 18,277 | 36,567 | 34,920 | 112,573 | 914,873 | 91 | 1,026,936 |
| 1929 | 45,106 | 41,846 | 90,442 | 51,279 | 228,678 | 828,217 | 35 | 1,057,442 |
| 1930 | 60,216 | 60,166 | 109,227 | 56,170 | 286,679 | 860,470 | 354 | 1,178,708 |
| 1931 | 37,867 | 39,252 | 203,067 | 41,302 | 312,286 | 941,674 | 7 | 1,294,969 |
| 1932 | 63,760 | 41,865 | 166,405 | 71,714 | 377,939 | 750,837 | 10 | 1,132,410 |
| 1933 | 82,862 | 64,268 | 123,712 | 107,062 | 377,939 | 851,662 | 153 | 929,772 |
| 1934 | 62,516 | 46,126 | 80,546 | 83,114 | 274,306 | 826,360 | 115,090 | 816,266 |
| 1935 | 44,326 | 30,804 | 31,951 | 40,524 | 146,706 | 826,344 | 34,617 | 867,660 |
| 1936 | 43,968 | 21,908 | 23,202 | 80,800 | 141,068 | 826,766 | 34,455 | 862,969 |
| 1937 | 21,651 | 11,520 | 16,197 | 52,869 | 102,477 | 875,676 | 634 | 978,787 |
| 1938 | 56,113 | 30,620 | 26,333 | 54,214 | 172,280 | 931,702 | 271 | 1,104,253 |
| 1939 | 90,372 | 36,631 | 61,334 | 63,020 | 263,266 | 751,435 | 362 | 1,044,064 |
| 1940 | 83,146 | 33,618 | 87,325 | 90,954 | 295,032 | 816,606 | 3,223 | 1,111,274 |
| 1941 | 89,097 | 73,240 | 151,606 | 93,882 | 408,115 | 932,997 | | 1,361,112 |
| With only old wheat in all stocks positions: | | | | | | | | |
| 1937 | 21,651 | 11,520 | 9,022 | 40,390 | 82,602 | 875,676 | 634 | 950,112 |
| 1938 | 56,113 | 30,620 | 22,190 | 40,791 | 152,714 | 931,702 | 271 | 1,084,967 |
| 1939 | 90,372 | 36,631 | 64,103 | 61,054 | 252,160 | 751,435 | 363 | 1,003,836 |
| 1940 | 83,146 | 33,618 | 94,189 | 80,650 | 291,603 | 816,606 | 3,223 | 1,101,834 |
| 1941 | 89,097 | 73,240 | 142,671 | 81,806 | 386,806 | 932,997 | | 1,330,603 |

TABLE 20.—Wheat: Supply and distribution in continental United States, 1923-41—Continued

DISTRIBUTION

| Year beginning July | Exports and shipments ¹ | | | | Domestic disappearance ² | | | | Stocks June 30 ³ |
|---|------------------------------------|------------------------------|--|------------------|-------------------------------------|--|--|------------------|-----------------------------------|
| | Exports (wheat only) | Exports flour as wheat | Ship- ments (flour in- cluded) ⁴ | Total | Seed | Feed (fed on farms of wheat growers) | Foods and com- mercial feeds ⁵ | Total | |
| With new wheat in commercial and merchant mill stocks: | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels | 1,000 bushels |
| 1923 | 78,703 | 67,213 | 2,973 | 148,979 | 74,111 | 60,670 | 476,525 | 630,306 | 137,087 |
| 1924 | 195,490 | 59,478 | 2,871 | 257,839 | 79,895 | 55,727 | 477,146 | 612,768 | 108,401 |
| 1925 | 63,189 | 31,428 | 2,741 | 97,358 | 78,828 | 28,214 | 474,223 | 581,265 | 100,225 |
| 1926 | 156,250 | 49,761 | 3,082 | 209,093 | 83,264 | 34,261 | 496,391 | 613,916 | 109,506 |
| 1927 | 145,999 | 45,228 | 2,692 | 193,919 | 89,864 | 44,507 | 544,081 | 678,462 | 112,372 |
| 1928 | 103,114 | 38,106 | 3,172 | 144,392 | 83,663 | 50,566 | 513,482 | 654,071 | 228,373 |
| 1929 | 92,175 | 48,179 | 2,983 | 143,337 | 83,353 | 59,769 | 477,305 | 619,427 | 298,879 |
| 1930 | 76,365 | 36,063 | 2,859 | 113,278 | 80,886 | 157,188 | 409,063 | 747,137 | 313,288 |
| 1931 | 96,521 | 26,376 | 2,757 | 125,654 | 80,049 | 173,991 | 499,802 | 753,842 | 375,473 |
| 1932 | 20,887 | 10,979 | 3,023 | 34,889 | 83,513 | 124,912 | 511,157 | 719,582 | 377,939 |
| 1933 | 18,800 | 6,796 | 2,779 | 28,377 | 77,832 | 72,261 | 476,999 | 627,092 | 274,306 |
| 1934 | 3,019 | 7,512 | 2,783 | 13,314 | 82,585 | 83,700 | 489,961 | 656,246 | 146,708 |
| 1935 | 3,111 | 3,896 | 2,899 | 7,096 | 87,555 | 83,168 | 488,162 | 658,885 | 141,688 |
| 1936 | 3,168 | 6,090 | 2,996 | 12,253 | 96,593 | 88,272 | 503,394 | 688,169 | 102,477 |
| 1937 | 83,740 | 16,320 | 3,321 | 103,381 | 94,146 | 112,860 | 496,120 | 703,126 | 172,280 |
| 1938 | 84,589 | 22,057 | 2,888 | 109,534 | 75,454 | 125,591 | 500,308 | 701,353 | 293,366 |
| 1939 | 23,636 | 21,292 | 3,475 | 48,343 | 72,853 | 91,487 | 537,328 | 701,698 | 293,053 |
| 1940 | 10,810 | 22,841 | (3,600) | 37,251 | 74,713 | 100,408 | 494,287 | 669,908 | 408,115 |
| With only old wheat in all stock positions: | | | | | | | | | |
| 1927 | 83,740 | 13,320 | 3,321 | 103,381 | 94,146 | 112,860 | 496,011 | 703,017 | 152,714 |
| 1938 | 84,589 | 22,057 | 2,888 | 109,534 | 75,454 | 125,591 | 521,948 | 722,993 | 252,160 |
| 1939 | 23,636 | 21,292 | 3,475 | 48,343 | 72,853 | 91,487 | 509,572 | 673,912 | 281,609 |
| 1940 | 10,810 | 22,841 | (3,600) | 37,251 | 74,713 | 100,408 | 502,846 | 677,967 | 386,006 |

Division of Statistical and Historical Research, Bureau of Agricultural Economics.

¹ 1923 to 1926 Bradstreet's, excluding country elevator stocks.² Stocks in merchant mills and elevators—1923 and 1924 estimated in absence of actual figures; 1925-40, Bureau of Census figures raised to represent all merchant mills. Stored for others—1923-25, estimated in absence of actual figures; 1930-40, Bureau of Census figures raised to represent all merchant mills.³ From reports of Foreign and Domestic Commerce of the United States. Imports include full-duty wheat, wheat paying a duty of 10 percent ad valorem, and dutiable flour in terms of wheat, and exclude flour free for export as follows: 42,742 bushels in 1935-36; 108,095 bushels in 1937-38; 353,263 bushels in 1938-39; 213,030, 1939-40; and 169,670, 1940-41. Exports include only flour made from domestic wheat; 1923-35 estimated on basis of total exports less wheat imported for milling in bond and export adjusted for changes in carry-over; beginning 1935, figures for exports and shipments of flour wholly from United States wheat.⁴ Includes durum wheat returned from Montreal, estimated at 1,500,000 bushels.⁵ For 1937 excludes new wheat estimated at 12,500,000 bushels; for 1938 excludes 13,423,000 bushels, or 1939, 23,975,000 bushels; for 1940, 10,314,000 bushels; and for 1941, 12,384,000 bushels, reported as new wheat by Bureau of Census.⁶ Shipments are to Alaska, Hawaii, Puerto Rico, and Virgin Islands (Virgin Islands prior to December 31, 1934, included with domestic exports). 1940 estimated in absence of official figures.⁷ Balancing item.⁸ For individual items; see supply section of this table.

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Chart 11

Wheat: Supply, Average Farm Price and Parity Price,
United States, 1923 to 1940

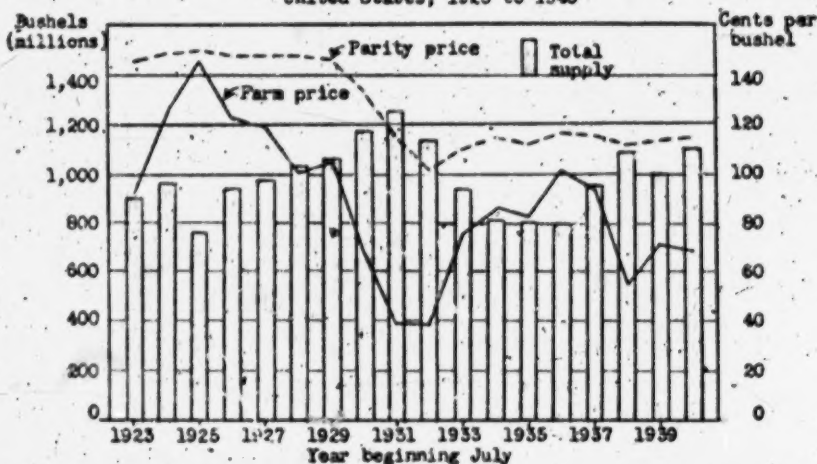


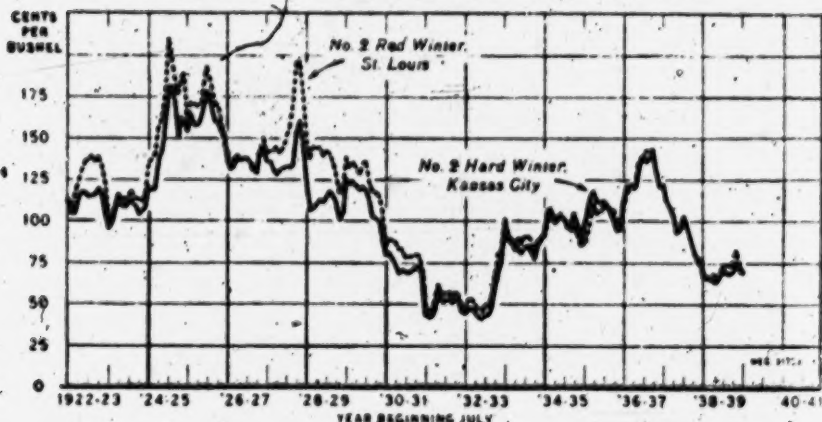
TABLE 21.—Wheat: Supply, average farm price and parity price, United States, 1923 to 1940

| Year beginning July | Total supply | Weighted average farm price | Simple average parity price | Farm price as percent of parity |
|---------------------|-----------------|-----------------------------|-----------------------------|---------------------------------|
| | Million bushels | Cents per bushel | Cents per bushel | Percent |
| 1923 | 906 | 92.6 | 145.0 | 63.9 |
| 1924 | 979 | 124.7 | 148.5 | 84.0 |
| 1925 | 779 | 143.7 | 149.4 | 96.2 |
| 1926 | 933 | 121.7 | 147.6 | 82.5 |
| 1927 | 985 | 119.0 | 147.6 | 80.6 |
| 1928 | 1,027 | 90.8 | 147.6 | 67.6 |
| 1929 | 1,052 | 103.6 | 115.0 | 71.4 |
| 1930 | 1,176 | 67.1 | 132.6 | 50.6 |
| 1931 | 1,255 | 39.0 | 114.0 | 34.2 |
| 1932 | 1,132 | 38.2 | 102.5 | 37.3 |
| 1933 | 930 | 74.4 | 109.6 | 67.9 |
| 1934 | 816 | 84.8 | 115.8 | 73.2 |
| 1935 | 808 | 83.2 | 112.3 | 74.1 |
| 1936 | 803 | 102.6 | 117.6 | 87.2 |
| 1937 | 959 | 96.3 | 116.7 | 82.5 |
| 1938 | 1,085 | 56.1 | 111.4 | 50.4 |
| 1939 | 1,004 | 69.2 | 112.3 | 61.6 |
| 1940 | 1,102 | 68.3 | 113.2 | 60.3 |

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Chart 12

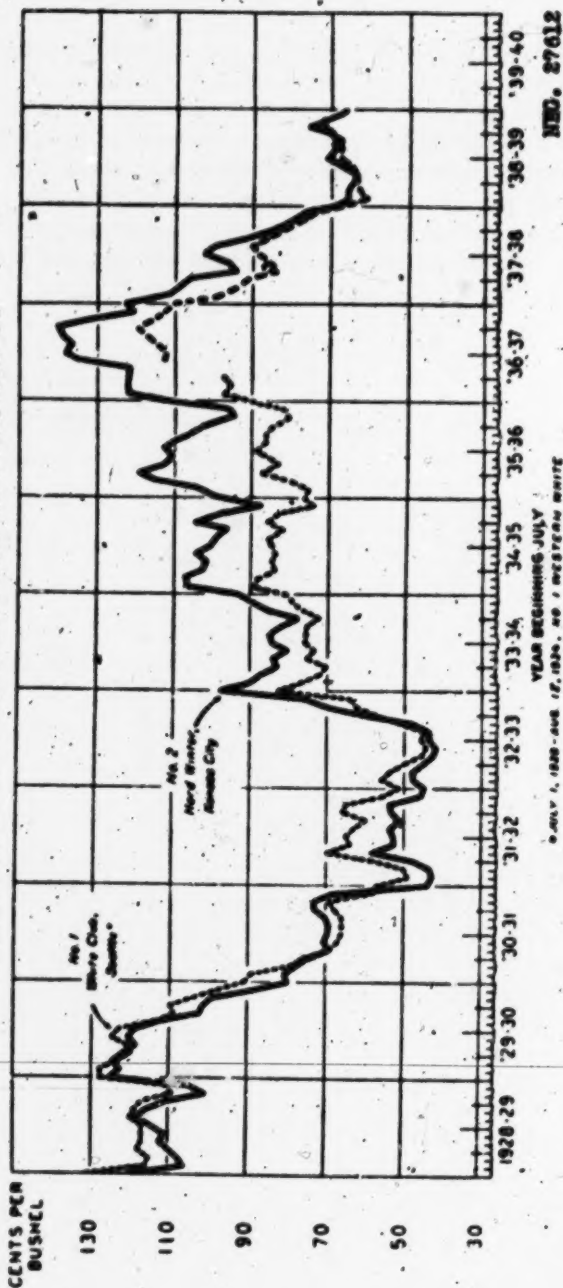
WHEAT: PRICES AT KANSAS CITY AND ST. LOUIS, 1922-39



The price of No. 2 Hard Winter wheat at Kansas City has usually averaged lower than the price of No. 2 Red Winter wheat at St. Louis, and in 1938-39 it was fractionally lower. For 3 years, 1934-35 to 1935-37, however, the price of hard red winter was high compared with red winter because supplies of hard red wheat were less than domestic needs. During these 3 years the prices of both classes of wheat were materially higher than they would have been had the United States been on an export basis.

Chart 13

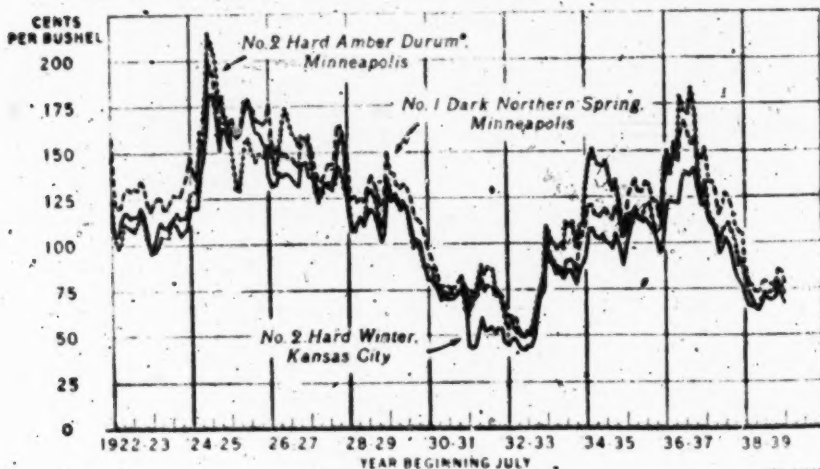
WHEAT: PRICES AT KANSAS CITY AND SEATTLE, 1928-39



Ordinarily exports of wheat have consisted mostly of hard winter wheat grown in the Southern Great Plains and white wheat from the Pacific Northwest. Prices of these two classes in past years were largely determined by foreign market conditions and followed similar courses. This is again expected to be the case in 1939-40. From 1933-34 to 1936-37, however, wheat production east of the Rocky Mountains was very small, and hard winter wheat prices were maintained at unusually high levels relative to those at Seattle.

Chart 14

WHEAT: PRICES AT KANSAS CITY AND MINNEAPOLIS, 1922-39



*NO. 2 AMBER DURUM JULY 1922-JUNE 1934

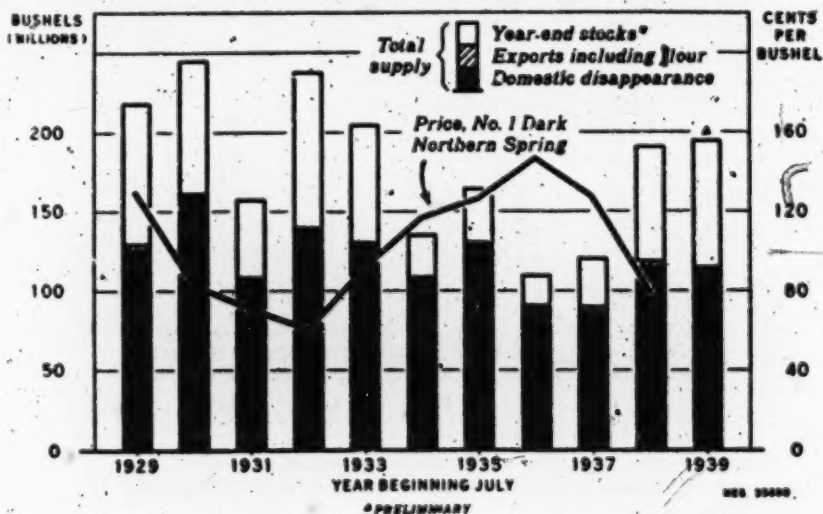
WEC 1-173

Prices of hard red spring and durum wheats from 1933-34 to 1936-37 were high relative to prices of hard red winter wheat as a result of particular shortages in these two classes during this period. With supplies again adequate for domestic needs, beginning in 1937-38, prices of hard red spring and durum wheats have adjusted to a more normal relationship to prices of hard red winter wheat.

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Chart-15

HARD RED SPRING WHEAT: DISTRIBUTION OF U. S. SUPPLY, AND PRICE AT MINNEAPOLIS, 1929-39



A considerable part of the wheat produced in the Southwest was again exported beginning with the 1937 crop, following 4 years of small supplies which curtailed exports. In recent years, increased production in other countries has reduced export opportunities for United States wheat. However, large exports in 1937-38 were possible because of small crops in other surplus-producing countries, and in 1938-39 by the Government export programs.

TABLE 22.—Hard red winter wheat: Estimated United States supply and distribution, and price at Kansas City, 1929-39

WITH NEW WHEAT IN COMMERCIAL AND MERCHANT MILL STOCKS

| Year beginning July | Stocks July 1 ¹ | Crop | Total supply | Exports including flour ² | Domestic disappearance ² | Stocks June 30 ³ | Price per bushel No. 2 Hard Winter ⁴ |
|---------------------|----------------------------|------------------------|------------------------|--------------------------------------|-------------------------------------|-----------------------------|---|
| | <i>Million bushels</i> | <i>Million bushels</i> | <i>Million bushels</i> | <i>Million bushels</i> | <i>Million bushels</i> | <i>Million bushels</i> | <i>Cents</i> |
| 1929 | 94 | 371 | 465 | 82 | 263 | 120 | 119.6 |
| 1930 | 120 | 404 | 524 | 65 | 306 | 153 | 75.5 |
| 1931 | 153 | 514 | 667 | 85 | 344 | 238 | 46.9 |
| 1932 | 238 | 281 | 519 | 22 | 26 | 201 | 50.9 |
| 1933 | 291 | 177 | 378 | 4 | 249 | 125 | 88.5 |
| 1934 | 125 | 208 | 333 | 3 | 262 | 68 | 98.1 |
| 1935 | 68 | 203 | 271 | 2 | 212 | 87 | 105.1 |
| 1936 | 57 | 260 | 317 | 3 | 257 | 87 | 121.4 |
| 1937 | 87 | 373 | 430 | 74 | 278 | 78 | 110.8 |
| 1938 | 78 | 388 | 466 | 76 | 236 | 154 | 69.5 |
| 1939 | 154 | 303 | 457 | | | | |

WITH ONLY OLD WHEAT IN ALL STOCKS POSITIONS

| | | | | | | | |
|------|-----|-----|-----|----|-----|-----|-------|
| 1937 | 37 | 373 | 410 | 74 | 276 | 80 | 110.8 |
| 1938 | 60 | 388 | 448 | 76 | 258 | 114 | 69.5 |
| 1939 | 114 | 303 | 417 | | | | |

¹ Exports plus shipment to Alaska, Hawaii, and Puerto Rico; include flour made wholly from domestic wheat.

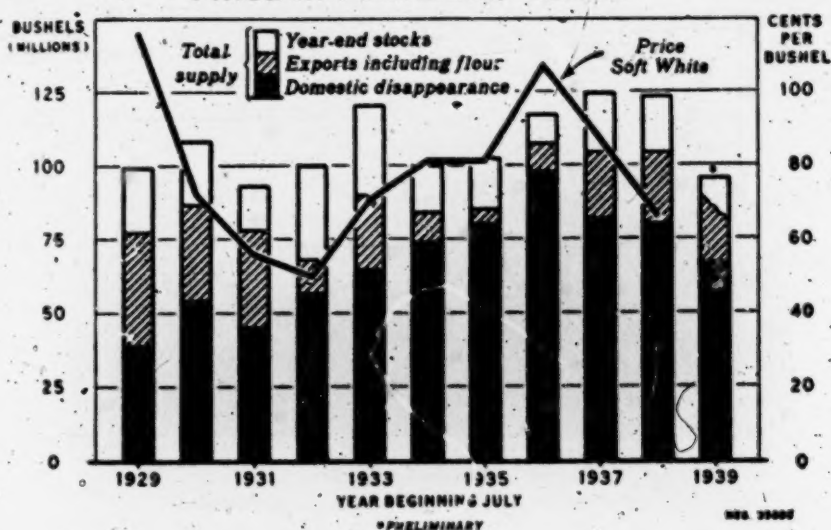
² Balancing item.

³ Stocks June 30, 1930-35 included some new wheat.

⁴ Weighted average, carlot sales reported in Kansas City Grain Market Review.

⁵ August estimate.

WHITE WHEAT: DISTRIBUTION OF U. S. SUPPLY, AND PRICE AT PORTLAND, 1929-39



A considerable part of the white wheat produced in the Pacific Northwest has been exported in the past. During the 3 years ended with 1936-37 unusually large amounts of white wheat were used domestically as the result of short wheat supplies east of the Rockies. Since that time exports have again been large as a result of the operation of the Government export programs.

TABLE 23.—White wheat: Estimated United States supply and distribution, and price at Portland, 1929-39

| Year beginning July | Stocks July 1 | Crop | Total supply | Exports, including flour ¹ | Domestic disappearance ² | Stocks June 30 | Price per bushel soft white |
|---------------------|-----------------|-----------------|-----------------|---------------------------------------|-------------------------------------|-----------------|-----------------------------|
| | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Cents |
| 1929 | 14 | 85 | 99 | 38 | 39 | 22 | 116 |
| 1930 | 22 | 86 | 108 | 32 | 54 | 22 | 72 |
| 1931 | 22 | 71 | 93 | 33 | 45 | 15 | 56 |
| 1932 | 15 | 85 | 100 | 11 | 57 | 32 | 80 |
| 1933 | 32 | 88 | 120 | 25 | 65 | 30 | 71 |
| 1934 | 30 | 70 | 100 | 10 | 74 | 16 | 81 |
| 1935 | 16 | 86 | 102 | 5 | 80 | 17 | 81 |
| 1936 | 17 | 100 | 117 | 9 | 98 | 10 | 107 |
| 1937 | 10 | 114 | 124 | 22 | 82 | 20 | 87 |
| 1938 | 20 | 103 | 123 | 24 | 80 | 19 | 66 |
| 1939 | 19 | 76 | 95 | | | | |

¹ Exports plus shipments to Alaska, Hawaii, and Puerto Rico include flour made wholly from domestic wheat.

² Balancing item.

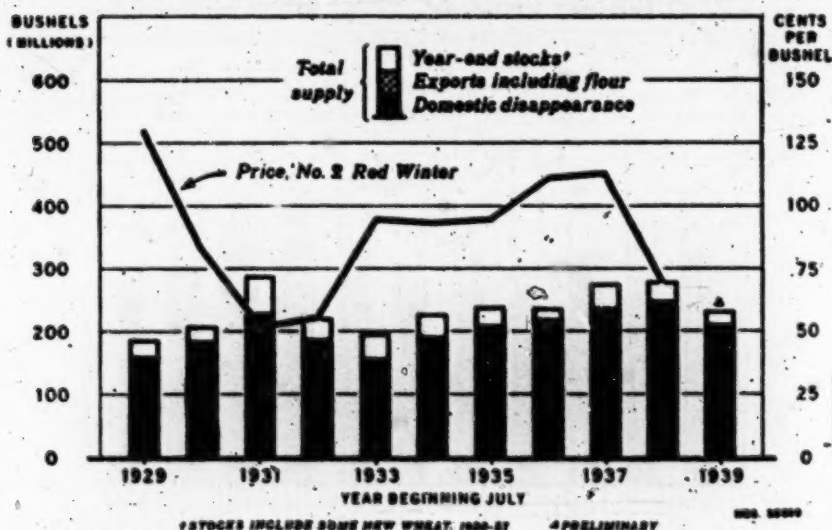
³ Prices reported in Northwest Daily Produce News, Seattle.

⁴ August estimate.

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Chart 17

SOFT RED WINTER WHEAT: DISTRIBUTION OF U. S. SUPPLY, AND PRICE AT ST. LOUIS, 1929-39



Very little soft red winter wheat has been exported since 1927. Though soft red winter wheat is best adapted for use in making pastry flour, it nevertheless competes with the lower protein hard red winter wheats used in making bread flours.

TABLE 24.—Soft red winter wheat: Estimated United States supply and distribution, and price at St. Louis, 1929-39

WITH NEW WHEAT IN COMMERCIAL AND MERCHANT MILL STOCKS

| Year beginning July | Stocks July 1 | Crop | Total supply | Exports, including flour ¹ | Domestic disappearance ² | Stocks June 30 ³ | Price per bushel No. 2 Red Winter ⁴ |
|---------------------|-----------------|-----------------|-----------------|---------------------------------------|-------------------------------------|-----------------------------|--|
| | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Cents |
| 1929 | 20 | 164 | 184 | 4 | 154 | 26 | 130.2 |
| 1930 | 26 | 180 | 206 | 4 | 170 | 23 | 83.4 |
| 1931 | 23 | 262 | 285 | 3 | 223 | 50 | 51.7 |
| 1932 | 59 | 159 | 218 | (⁵) | 187 | 31 | 55.2 |
| 1933 | 31 | 162 | 193 | (⁵) | 157 | 36 | 94.3 |
| 1934 | 36 | 168 | 224 | (⁵) | 192 | 32 | 93.9 |
| 1935 | 32 | 204 | 236 | (⁵) | 200 | 27 | 94.9 |
| 1936 | 27 | 207 | 234 | (⁵) | 219 | 15 | 111.1 |
| 1937 | 15 | 256 | 273 | 5 | 229 | 39 | 112.6 |
| 1938 | 39 | 237 | 276 | 4 | 241 | 31 | 69.6 |
| 1939 | 31 | * 198 | 229 | | | | |

WITH ONLY OLD WHEAT IN ALL STOCKS POSITIONS

| | | | | | | | |
|------|----|-----|-----|---|-----|----|-------|
| 1937 | 13 | 256 | 273 | 5 | 231 | 37 | 111.1 |
| 1938 | 37 | 237 | 274 | 4 | 240 | 30 | 112.6 |
| 1939 | 30 | 198 | 228 | | | | 69.6 |

¹ Exports plus shipments to Alaska, Hawaii, and Puerto Rico; include flour made wholly from domestic wheat.

² Balancing item.

³ Stocks June 30, 1930-37 include some new wheat.

⁴ Weighted average; carlot sales reported in St. Louis Market Record.

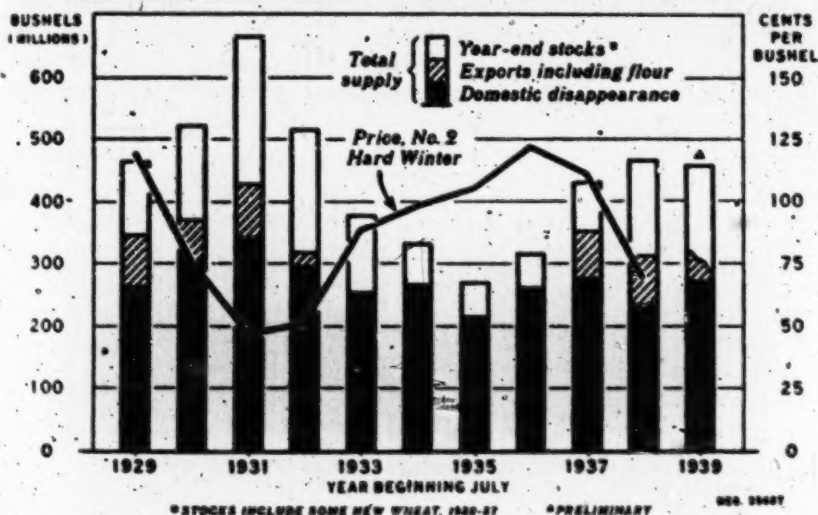
⁵ Less than 500,000 bushels.

* August estimate.

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Chart 18

HARD RED WINTER WHEAT: DISTRIBUTION OF U. S. SUPPLY, AND PRICE AT KANSAS CITY, 1929-39



Very little hard red spring wheat has been exported since 1924 in spite of wide fluctuations in production. Exports in 1937-38 and 1938-39 were only 2 and 3 million bushels, respectively. Production in 1934 to 1936 was small and prices advanced sufficiently for imports to take place.

TABLE 25.—Hard red spring wheat: Estimated United States supply and distribution, and price at Minneapolis, 1929-39

| Year beginning July | Stocks July 1 | Crop | Imports wheat and flour | Total supply | Exports including flour ¹ | Domestic disappearance ² | Stocks June 30 | Price per bushel No. 1 Hk. No. Spr. ³ |
|---------------------|-----------------|-----------------|-------------------------|-----------------|--------------------------------------|-------------------------------------|-----------------|--|
| | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Cents |
| 1929 | 73 | 146 | | 219 | 3 | 127 | 80 | 126.5 |
| 1930 | 80 | 157 | | 246 | 1 | 190 | 85 | 82.3 |
| 1931 | 85 | 73 | | 158 | (⁴) | 109 | 49 | 70.9 |
| 1932 | 49 | 190 | | 239 | (⁴) | 141 | 98 | 60.8 |
| 1933 | 98 | 197 | | 295 | (⁴) | 131 | 74 | 91.3 |
| 1934 | 74 | 53 | 9 | 136 | (⁴) | 109 | 27 | 116.4 |
| 1935 | 27 | 108 | 30 | 165 | (⁴) | 131 | 34 | 128.0 |
| 1936 | 34 | 51 | 25 | 110 | (⁴) | 92 | 18 | 146.9 |
| 1937 | 18 | 102 | 1 | 121 | 2 | 88 | 31 | 127.9 |
| 1938 | 31 | 161 | | 192 | 3 | 116 | 73 | 79.1 |
| 1939 | 73 | 122 | | 195 | | | | |

¹ Exports plus shipments to Alaska, Hawaii, and Puerto Rico; include flour made wholly from domestic wheat.

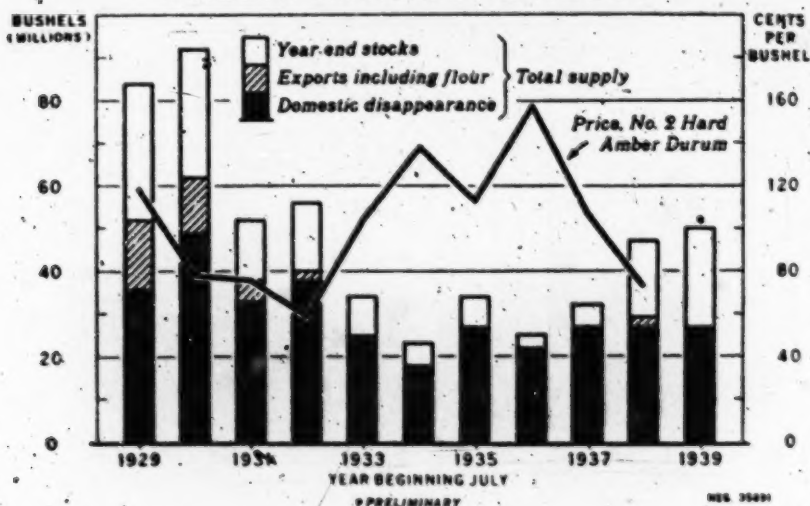
² Balancing item.

³ Weighted average; price sales reported in Minneapolis Daily Market Record.

⁴ Less than 500,000 bushels.

⁵ August estimate.

DURUM WHEAT: DISTRIBUTION OF U. S. SUPPLY, AND PRICE AT MINNEAPOLIS, 1929-39



Before 1930 a considerable part of the durum wheat produced in the United States was exported. During the 3 years ending with 1936-37 supplies were small and prices were relatively high so that some durum was imported. In 1938-39 exports amounted to 2 million bushels.

TABLE 26.—Durum wheat: Estimated United States supply and distribution, and price at Minneapolis, 1929-39

| Year beginning July | Stocks July 1 | Crop | Imports, wheat and flour | Total supply | Exports, including flour ¹ | Domestic disappearance ² | Stocks June 30 | Price per bushel No. 2 Hd. A. Durum ³ |
|---------------------|-----------------|-----------------|--------------------------|-----------------|---------------------------------------|-------------------------------------|-----------------|--|
| | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Million bushels | Cents |
| 1929 | 27 | 57 | | 84 | 16 | 36 | 32 | 118.7 |
| 1930 | 32 | 60 | | 92 | 13 | 49 | 30 | 77.8 |
| 1931 | 30 | 22 | | 52 | 5 | 33 | 14 | 75.8 |
| 1932 | 14 | 42 | | 56 | 2 | 38 | 16 | 58.4 |
| 1933 | 16 | 18 | | 34 | (⁴) | 25 | 9 | 103.2 |
| 1934 | 9 | 7 | 7 | 23 | (⁴) | 18 | 5 | 137.7 |
| 1935 | 5 | 25 | 4 | 34 | (⁴) | 27 | 7 | 112.8 |
| 1936 | 7 | 9 | 9 | 25 | (⁴) | 22 | 3 | 150.9 |
| 1937 | 3 | 29 | (⁴) | 32 | (⁴) | 27 | 5 | 109.9 |
| 1938 | 5 | 42 | | 47 | 2 | 27 | 18 | 72.1 |
| 1939 | 18 | 32 | | 50 | | | | |

¹ Exports plus shipments to Alaska, Hawaii, and Puerto Rico; include flour made wholly from domestic wheat.

² Balancing item.

³ Weighted average; carlot sales reported in Minneapolis Daily Market Record No. 2 Amber Durum, July 1929 to June 1934; No. 2 Hard Amber Durum beginning July 1934.

⁴ Less than 500,000 bushels.

⁵ August estimate.

GOVERNMENT AID TO WHEAT PRODUCERS

Because it is so widely grown and has an important influence on the agricultural economy of many countries, wheat has been subject to more government intervention and aid than any other crop and is usually given primary consideration in drafting agricultural relief measures. In nearly all countries these measures have been designed, in part at least, to protect the domestic prices received by wheat producers. This has been an aim in both importing and exporting countries, but different methods have been used because the circumstances and needs have not been the same in all countries.

Many countries, particularly European wheat importing countries, have attempted in recent years to become more self-sufficient; consequently, they adopted various measures in an effort to increase their own production of wheat. These devices included such actions as import quotas or licenses; higher import duties; mixing regulations limiting the amount of imported wheat that may be mixed with domestic wheat for the manufacture of flour; control over the commodities and origin of the commodities for which foreign-exchange will be expended; fixed or guaranteed minimum prices; and government operated monopolies with absolute control of the country's wheat trade. The operation of these measures resulted in an increased production of wheat in the importing countries and lessened the demand for surplus wheat grown in the exporting countries.

124 The United Kingdom has been by far the leading wheat-importing country of the world, and though, prior to the present war, import requirements had declined only slightly, the demand for imported wheat has not expanded with the increase in population. One explanation of the failure of British wheat imports to expand is found in the scheme for aiding the home producer.

In 1932, the United Kingdom government passed the Wheat Marketing Act, which provided for a guaranteed price to producers on a specified production of wheat. Funds for making up the difference between what the grower receives on the market and the guaranteed price are obtained from a tax on all flour milled in the United Kingdom, from either domestic or imported wheat. When the scheme went into effect in 1932, a price equivalent to about \$1.30 a bushel was guaranteed on a production of 50 million bushels. In the five years immediately preceding 1932 the average British wheat crop was 47 million bushels. In July 1937, although the guaranteed price was not changed, the quantity

of home production on which this price was guaranteed was increased to 67 million bushels, or 43 percent more than the average production in years immediately preceding the inauguration of the Wheat Marketing Act. Actual production of wheat in the United Kingdom during the years 1933 to 1937 averaged 62 million bushels, or about one-third higher than the average production from 1927 to 1931. In 1938, wheat production, 125 with very favorable growing conditions, had increased to 73 million bushels, and this year it is expected to reach about 77 million bushels with barely average yields.

Italy was formerly the largest importer of wheat in continental Europe, but net imports declined 78 percent from the average of the middle 20's to the middle 30's. The decline in Italian wheat requirements has been due both to increased domestic production and to decreased total consumption. The Italian farmer has been given an incentive to maintain or expand wheat production in the form of a guaranteed price, amounting in 1938 to the equivalent of about \$2.00 a bushel. Average production increased 25 percent in recent years, though the wheat-producing area of Italy was increased only about 5 percent between 1926 and 1936. There has been, therefore, a marked rise in the average yield per acre, and so far as production is concerned, it appears that Italy has won the "Battle of Wheat" in years of at least average weather conditions. The other important factor, however, in the decline in Italian wheat imports is the decrease in consumption; in recent years Italy has pursued a policy of compulsory mixing of substitute flours and meal with wheat flour. It appears, as a result of these and other government policies affecting the quality and price of wheat products, that Italian wheat consumption, on a per capita basis, has declined by about ten percent in the past ten years.

126 Germany was formerly the second largest wheat-importing country in continental Europe, but net wheat imports declined 89 percent from the average of the middle 20's to the middle 30's. In 1938, German production of wheat and rye together was sufficient for total requirements, although some wheat was imported for special needs and for addition to stocks. The explanation of the decline of German requirements for wheat is found largely in increased production. Wheat acreage increased from about 4 million acres in 1926 to over 5 million acres in 1936, largely at the expense of feed grains, such as oats, the acreage of which declined. Average wheat production increased about 68 percent. As in Italy, farmers in Germany have been encouraged to grow more wheat by the establishment of favorable guaranteed prices; in 1938, the German farmer was assured a

price equivalent to more than \$2.00 a bushel. On the side of consumption, it is important to note that rye has always been an important alternative breadstuff in Germany, and as a result of the large quantities formerly fed to livestock it has been possible by means of various regulations and programs to bring about a shift to larger consumption of rye for human food. The mixing of corn meal and potato flour has also been employed at times to conserve bread grain.

France is one of the largest wheat-producing countries in the world and so can never be considered a regular outlet for substantial quantities of wheat. France occasionally has im-
127 ported large amounts of wheat in seasons of adverse weather conditions, but in some years it had considerable surpluses because of unusually good growing conditions. The historic policy of the French Government with respect to wheat has been to maintain sufficient protection against imports to assure remunerative prices to the French producer. In recent years, with occasional substantial export surpluses, it has not been possible to maintain prices through merely restricting imports. Consequently, the French Government has taken over marketing of wheat as a government monopoly. Foreign trade in wheat is subject to direct governmental control, and French wheat producers are guaranteed a definite price, equivalent in 1939 to an average of about \$1.50 a bushel.

The minor European wheat-deficit countries have also been restricting imports of wheat and encouraging domestic production, and have done so directly by governmental policies, such as those described generally in a previous paragraph.

As a result of such restrictive measures adopted by the importing countries, as well as the low level of world wheat prices and the importance of wheat in their national economy, the four large exporting countries of Argentina, Australia, Canada, and the United States have all been forced into definite governmental programs to bring relief to their wheat growers. The

128 measures adopted have included subsidy payments to growers, government-guaranteed minimum prices, export bounties, currency depreciation, and barter or other preferential trade agreements. The steps taken by these countries, as in importing countries, have generally evolved toward government control, though in varying degrees depending upon the individual country's situation and problems. In addition to their own domestic programs, these countries have taken the initiative in discussions intended to result in an International Wheat Agreement by means of which the exporting countries would apportion the trade amongst themselves on an equitable and "fair price"

basis, and if possible obtain some increase in consumption and in international trade in wheat. In this way price-depressing competition would be replaced by regulated marketings and the programs in the individual countries could be operated with the expectation of marketing a reasonable amount of wheat in export.

In November 1933, the Argentine Government created the Grain Regulating Board which, in most years of low prices, has established minimum prices and purchased wheat at these guaranteed prices. The purpose of this action was to prevent prices from falling below the cost of production, but individuals were

left free to buy and sell below the minimum. No direct
129 attempt has yet been made to control acreage or production.

Any losses to the Government because of the selling of wheat for export at less than the Government purchase price were made up from the profits obtained by buying export bills at one rate and selling foreign exchange to importers at a higher rate, or if these profits were not sufficient, from funds of the National Bank. For the 1940 crop Argentina established a minimum price of 55 cents a bushel in United States money.

Argentina has, through the organization of the National Bureau of Grain Elevators and the National Grain and Elevator Commission, a program for State-owned rural and terminal elevators. Also the grain law of September 1935 gave broad powers to the Federal Government over the production and marketing of grain.

The Australian Government has paid bounties and made direct grants to wheat producers in most years since 1931. Recently legislation has been passed in Australia in an effort to keep wheat production within reasonable limits and yet render assistance to wheat growers. A fixed price of about 56.5 cents per bushel will be guaranteed on an annual crop of not more than 140 million bushels, with free rail transportation to ports provided. If the export prices go above the fixed prices, the increase will be shared between the farmer and the Government.

In return for the price guarantee, farmers must agree to seed the areas authorized by the Government, to cut for hay any fields designated for this purpose, and to market their wheat
130 through the Government. No license to grow wheat will be issued to farmers who had no acreage under wheat when the legislation was passed. Furthermore, the Australian Commonwealth Government will require the States to speed up measures for removing wheat from marginal lands and for diversifying agricultural production.

During the early years of the depression, Canada experimented with various methods of aid to wheat producers, including the use of voluntary marketing pools, Government guaranty of bank loans

to wheat pools, and direct purchases of wheat for Government account. In 1931-32, wheat producers received a bounty of 5 cents a bushel. The various measures taken, however, failed to solve the problem of accumulation of surpluses.

General dissatisfaction with previous policies resulted in the passage of the Canadian Wheat Board Act in July 1935. This act provides for direct Government control of wheat marketing. The outstanding provision is fixed minimum prices to growers. In addition, however, the Board is empowered to direct export sales and control grain elevators and regulate their relations with transportation agencies. In short, the Board is authorized to use all the usual marketing channels or to create its own machinery if necessary.

Producers were not compelled to sell their wheat to the Board, but only by so doing were they assured of receiving at least the guaranteed price. If the Board eventually disposed of the
131 wheat at more than the minimum price, the participating producers were entitled to a share of the excess. Whenever the Board incurred losses in selling wheat below prices paid to producers, the loss was a direct charge on the National Treasury.

Canada appears to have an effective means of disposing of its wheat surplus in the export market. An important advantage is that strong Canadian wheat is preferred by many of the importing countries even though the price is somewhat higher than that at which weaker wheats, such as Argentine offerings, can be obtained. The cost of the program to the Canadian Government was high last year and the storage problem became acute with one of Canada's largest crops. Canada's present carryover of old wheat, August 1, 1941, reached the record figure of 480 million bushels.

As a result of these large 1940 supplies, Canada's 1941 program has encouraged farmers to seed less wheat in 1941. The Government guarantees payment for 230 million bushels at the prices prevailing for 1940 wheat, delivered according to quotas based on 65 percent of the acreage sown for 1940. The limit set for deliveries to the Wheat Board, 230 million bushels, is equal to about half of the indicated deliveries of wheat from the large crops of the past two years. Though it is indicated that farmers will not be compelled to reduce their acreage, they are urged to

keep before them an objective of not more than 65 percent
132 of last year's seedings, which is the basis of the market quotas. It has been estimated that Canada's 1941 wheat acreage has been reduced about 22 percent from the large 1940 acreage.

In order to maintain western farm income and also assist in bringing about an acreage adjustment, the Government proposes

to pay the farmer a bonus on the acreage diverted from wheat, provided it is used in certain specified ways. Wheat acreage left to summer fallow will draw a bonus of \$4 per acre on July 1, 1941, or as soon as possible thereafter. If feed grains or rye are sown on areas diverted from wheat, the bonus will be \$2 per acre. If such acreage is sown to grass or clover, the payment will be \$2, with an additional \$2 if the land is still seeded to the same crop on July 1, 1942. All these acreage bonuses are to apply to the Prairie Provinces only, leaving the winter-sown acreage of Canada unaffected.

The history of relief for wheat producers in the United States does not differ materially from that in Canada, although greater emphasis has been placed upon the desirability of withholding supplies from the market and curtailing acreage in order to bolster prices. The first large-scale operations of this nature were conducted by the Farm Board and resulted in large losses, due primarily to several years of large United States and world wheat crops, as well as the world-wide depression.

Largely as a result of drought-reduced crops from 1934 through 1936, the carryover of wheat in the United States 133 was reduced to about normal proportions. During this period, however, supplies of white wheat in the Pacific Northwest continued to be excessive, and the Government took various steps to assist growers in that section of the country. The first of these was the organization of the North Pacific Emergency Export Association which operated in 1933-34. This Association was required, under the terms of a marketing agreement with producers, exporters, and millers in Washington, Oregon, and northern Idaho, to facilitate the export of surplus wheat from that region. Payments at the rate of approximately 23 cents per bushel were made on over 28 million bushels, about three-fourths of which was sold in the form of wheat and one-fourth in the form of flour.

The second step was the subsidization of exports of Pacific Northwest wheat flour to the Philippines. This program has been in effect since March 5, 1936. It has been justified on the grounds that we should regain our share of Philippine imports of flour, which had declined from 81 percent during the years 1925 to 1933 to only about 23.5 percent in 1935 and 1936. Under this program, indemnities are paid to millers for flour milled from Pacific Northwest wheat and exported to the Philippines. The program has been successful in regaining for the United States a large share of the Philippine flour market, with the United States currently supplying better than 65 percent of Philippine flour imports.

With the harvesting of a near-record wheat crop in the United States in 1938, together with a very large world crop, it became apparent that a broader program for promoting exports would be necessary if the United States were to maintain its former share of the world market. On August 29, 1938, the Department of Agriculture announced an export-sales policy for wheat and flour for the 1938-39 marketing season. Under the wheat-export program, the Federal Surplus Commodities Corporation purchased wheat from both dealers and producers and since these purchases were for export, they were confined to those classes and grades suitable for export. Exporters of wheat were then invited to make offers to buy, for export, wheat held by the Corporation, and to specify the classes and grades desirable and the prices they would pay. These offers were examined and, if considered reasonable in the light of competitive factors, the wheat was sold. Thus the export trade is conducted through regular trade channels. At first the Corporation had a revolving fund from the Reconstruction Finance Corporation; for some time payments were made as a subsidy from funds provided by Section 32, Public Law No. 320; and now wheat held by the Commodity Credit Corporation is sold for export by the Surplus Marketing Administration.

Although similar in its objective to the wheat-export program, the flour-export program differs somewhat in its operation. Payments are made to exporters based on the difference between the domestic price of flour and prices in foreign markets at the time of sale. Because of fluctuations in the price of flour in the principal world markets and because of the many varieties and grades of American wheat used in making flour, the formula on which such payments are made is not rigid. Payments are made available directly from funds provided by Section 32, Public Law No. 320, which authorizes the Secretary of Agriculture to use 30 percent of the annual customs receipts for the encouragement of export trade, as well as domestic consumption, of agricultural commodities.

In addition to export subsidy programs on wheat and flour, United States wheat farmers have received assistance from the Government for several years, first in the form of adjustment payments, and then price supporting loans, conservation and parity payments, and crop insurance. Participation in these programs depends on compliance with wheat acreage allotments, which, with the farm normal or actual yields, largely determine the farm marketing quotas.

Public Law No. 74, approved May 26, 1941, provides for loans on wheat of 85 percent of parity price on July 1, 1941, if the wheat farmers subject to marketing quotas approved them by a two-thirds majority in a nation-wide referendum. All wheat farmers seeding within their 1941 farm wheat allotments may receive loans which, for the whole country, are expected to average 98 cents at the farm. Participating farmers seeding within their 1941 farm wheat acreage allotments also receive 18 cents a bushel on the normal production of their allotments under the Agricultural Conservation and Parity Programs, administered by the Agricultural Adjustment Administration. The funds for these payments are appropriated by Congress specifically for this purpose. In addition, these farmers may secure from the Federal Crop Insurance Corporation a guarantee to make up to them the amount by which their wheat production in 1941 falls below either 50 or 75 percent of their normal production on the acreage seeded. In obtaining this crop insurance, the farmer must pay a premium calculated to represent the average indemnity per acre for his farm over a long period of years.

Nonparticipating farmers overseeding their wheat allotments are not eligible for these specific benefits; but as a result of these programs, they market their wheat at a price far above any world price based on the natural reaction of supply and demand.

As a result of the 85-percent-of-parity price supporting loan, the agricultural conservation and parity payments, and a good crop, farmers appear certain to obtain a larger income from their wheat crop in 1941-42 than in any year since 1927-28. The value and purchasing power of wheat crops is presented in Table 27, for the years 1910-11 to 1941-42.

137 TABLE 27.—Wheat: Farm value, Government payments and purchasing power, United States, 1910-11 to 1941-42

| Crop year | Farm value of wheat production ¹ | Wheat payments made under AAA, ACP, and Parity | Farm value plus payments | Index of prices paid by farmers (inc. int. and taxes) ² | Purchasing power of the wheat crop ³ |
|---------------------|---|--|--------------------------|--|---|
| | 1,000 dollars | 1,000 dollars | 1,000 dollars | Percent | 1,000 dollars |
| 1910-11 | 567,900 | | 567,900 | 98 | 579,398 |
| 1911-12 | 537,068 | | 537,068 | 100 | 537,068 |
| 1912-13 | 588,778 | | 588,778 | 101 | 582,946 |
| 1913-14 | 566,039 | | 566,039 | 102 | 584,352 |
| 1914-15 | 874,009 | | 874,009 | 104 | 840,393 |
| 1915-16 | 998,800 | | 998,800 | 116 | 835,172 |
| 1916-17 | 910,032 | | 910,032 | 136 | 669,156 |
| 1917-18 | 1,268,896 | | 1,268,896 | 161 | 788,135 |
| 1918-19 | 1,853,093 | | 1,853,093 | 188 | 985,672 |
| 1919-20 | 2,050,421 | | 2,050,421 | 203 | 1,014,493 |
| 1920-21 | 1,539,584 | | 1,539,584 | 184 | 836,730 |
| 1921-22 | 843,458 | | 843,458 | 165 | 517,459 |
| 1922-23 | 817,929 | | 817,929 | 164 | 498,737 |
| 1923-24 | 703,263 | | 703,263 | 164 | 428,831 |
| 1924-25 | 1,049,534 | | 1,049,534 | 168 | 624,723 |
| 1925-26 | 961,131 | | 961,131 | 169 | 568,717 |
| 1926-27 | 1,012,831 | | 1,012,831 | 167 | 606,456 |
| 1927-28 | 1,041,512 | | 1,041,512 | 167 | 623,660 |
| 1928-29 | 912,496 | | 912,496 | 167 | 546,495 |
| 1929-30 | 852,928 | | 852,928 | 164 | 520,078 |
| 1930-31 | 594,892 | | 594,892 | 120 | 396,595 |
| 1931-32 | 367,636 | | 367,636 | 129 | 284,989 |
| 1932-33 | 289,156 | | 289,156 | 116 | 249,272 |
| 1933-34 | 410,291 | 93,896 | 504,097 | 124 | 406,530 |
| 1934-35 | 446,367 | 105,654 | 551,921 | 131 | 421,314 |
| 1935-36 | 521,315 | 114,988 | 636,303 | 127 | 501,026 |
| 1936-37 | 642,859 | 43,389 | 686,248 | 133 | 515,976 |
| 1937-38 | 842,843 | (4) | 842,843 | 132 | 638,517 |
| 1938-39 | 822,699 | 50,126 | 872,825 | 129 | 654,075 |
| 1939-40 | 519,651 | 137,555 | 657,206 | 127 | 517,485 |
| Preliminary 1940-41 | 548,093 | 103,640 | 651,733 | 128 | 506,823 |
| Estimate 1941-42 | 932,000 | 107,000 | 1,039,000 | 138 | 753,000 |

¹ Published in Agricultural Statistics, 1940.

² Average of calendar year in which crop was grown and the calendar year following, for 1910-11 to 1922-23; average of monthly figures for crop year beginning July, for 1923-24 to 1940-41; an estimate for 1941-42. (Basic data from B. A. E.)

³ Calculated by dividing farm value plus payments by index of prices paid by farmers.

⁴ Estimates of payments received by wheat farmers as part of a general payment under 1936 and 1937 ACP are not available.

⁵ Estimated production of 950,953,000 bushels X average loan rate of 96¢.

THE 1941 NATIONAL ACREAGE ALLOTMENT AND NATIONAL MARKETING QUOTA

On May 13, 1940, the Secretary of Agriculture announced the 1941 national wheat acreage allotment of 62 million acres. This allotment was determined as the acreage which, on the basis of the national average yield, would produce sufficient wheat, together with the carry-over, to result in a supply of 130 percent of a normal year's domestic consumption and exports:

Average domestic consumption and exports of 758 million bushels during the ten years 1929 to 1938 were considered as "normal" since there does not appear to be a definite upward or downward current trend in the annual figures. Averages for the ten-year period for the items comprising domestic consumption are 499 million bushels used for foods and commercial feeds, 84 million bushels used for seed, and 109 million bushels used for livestock feed on farms where grown. Exports averaged 66 million bushels during the ten years, giving a total of 758 million bushels for normal domestic consumption and exports. 130 percent of this figure is 985 million bushels, from which an estimated carry-over on July 1, 1941, of 244 million bushels was subtracted, giving a production goal for the 1941 wheat crop of 741 million bushels. The national average yield of 12 bushels was divided into the goal of 741 million bushels, giving a national acreage allotment of 62 million acres.

139 Table 28 shows the details of the calculation of the 1941 national wheat acreage allotment, which provides for sufficient wheat for use as seed and feed, as well as flour.

On May 9, 1941, the Secretary of Agriculture proclaimed a national marketing quota for wheat for the marketing year 1941-42. It is only when supplies of wheat exceed 135 percent of a normal year's domestic consumption and exports that a marketing quota is in effect. Excessive supplies necessitated the quota for 1941-42.

In determining the total supply for the marketing year 1941-42, the estimated carry-over on July 1, 1941, of 378 million bushels was added to preliminary estimates of 1941 wheat production of 858 million bushels, giving a total supply for the marketing year 1941-42 of 1,236 million bushels. It may be added that the August 1 estimate of 1941 wheat production is 951 million bushels, 93 million bushels above that used by the Secretary in his proclamation on May 9.

Average domestic consumption and exports of 755 million bushel during the ten years 1930 to 1939 were considered as

"normal" since there does not appear to be a definite upward or downward current trend in the annual figures. 135 percent of this figure is 1,019 million bushels, but the estimated total supply for 1941-42 of 1,236 million bushels exceeds the normal domestic consumption and exports by 64 percent.

140 Table 29 shows the details of the calculations incident to the proclamation of the national wheat marketing quota for the marketing year 1941-42.

141 TABLE 28.—Calculation of the 1941 National Wheat Acreage Allotment, May 1940

| | Million bushels |
|---|-----------------|
| 1. Carry-over—July 1, 1939 | 254 |
| 2. Production—1939 | 755 |
| 3. Total supply—1939-40 (1+2) | 1,009 |
| Consumption, Exports, and Carry-over, 1939-40: | |
| 4. Foods and commercial feeds | 503 |
| 5. Seed | 78 |
| 6. Livestock feed | 92 |
| 7. Total domestic consumption (4+5+6) | 673 |
| 8. Exports | 47 |
| 9. Consumption and exports (7+8) | 720 |
| 10. Carry-over—July 1, 1940 (3-9) | 289 |
| 11. Crop insurance reserves—July 1, 1940 | 15 |
| 12. "Carry-over" under Agr. Adj. Act of 1938 (10-11) | 274 |
| Estimated Supply 1940-41: | |
| 13. Winter wheat production (May 1940 Crop Report) | 400 |
| 14. Spring wheat production (estimate furnished Adm. May 1940) | 215 |
| 15. Total supply—1940-1941 (12+13+14) | 949 |
| Normal Domestic Consumption and Exports (1929-38 average): | |
| 16. Foods and commercial feeds | 499 |
| 17. Seed | 84 |
| 18. Livestock feed | 109 |
| 19. "Normal" domestic consumption (16+17+18) | 692 |
| 20. "Normal" exports | 66 |
| 21. "Normal" domestic consumption and exports (19+20) | 758 |
| 22. 130% of "normal" domestic consumption and exports | 985 |
| Estimated Consumption, Exports, and Carry-over, 1940-41: | |
| 23. Foods and commercial feeds | 500 |
| 24. Seed (for estimated 65 million acres for 1941 harvest) | 80 |
| 25. Livestock feed (1929-1938 average, excluding abnormal year) | 85 |
| 26. Total domestic consumption (23+24+25) | 665 |
| 27. Exports | 40 |
| 28. Consumption and exports (26+27) | 705 |
| 29. Carry-over—July 1, 1941 (15-28) | 244 |

| Calculation of National Allotment 1941: | | Million bushels |
|---|--|-----------------|
| 30. Objective for 1941 crop (22-23)----- | | 741 |
| 31. National average yield per acre (1930-1939 average, omitting 1933, 1934, and 1936 to adjust for abnormal weather conditions)----- | | 12 |
| 32. 1941 national wheat acreage allotment (30÷31)----- | | 62 |

142 TABLE 29.—Calculations for Proclamation of the 1941 National Wheat-Marketing Quota, May 1941

| Supply 1940-41: | | Million bushels |
|---|--|-----------------|
| 1. Carry-over—July 1, 1940----- | | 282 |
| 2. Production—1940----- | | 817 |
| 3. Total supply—1940-41 (1+2)----- | | 1,099 |
| Consumption, Exports, and Carry-over, 1940-41: | | |
| 4. Foods and commercial feeds----- | | 504 |
| 5. Seed----- | | 75 |
| 6. Livestock feed----- | | 100 |
| 7. Total domestic consumption (4+5+6)----- | | 679 |
| 8. Exports----- | | 30 |
| 9. Consumption and exports (7+8)----- | | 709 |
| 10. Carry-over—July 1, 1940 (3-9)----- | | 289 |
| 11. Crop insurance reserves—July 1, 1941----- | | 12 |
| 12. "Carryover" under Agr. Adj. Act of 1938 (10-11)----- | | 378 |
| Estimated Supply 1941-42: | | |
| 13. Winter wheat production (May 1941 Crop Report)----- | | 653 |
| 14. Spring wheat production (estimate furnished Adm. May 1941)----- | | 205 |
| 15. Total supply—1941-42 (12+13+14)----- | | 1,236 |
| Normal Domestic Consumption and Exports (1930-1939 average): | | |
| 16. Foods and commercial feeds----- | | 504 |
| 17. Seed----- | | 83 |
| 18. Livestock feed----- | | 111 |
| 19. "Normal" domestic consumption (16+17+18)----- | | 698 |
| 20. "Normal" exports----- | | 57 |
| 21. "Normal" domestic consumption and exports (19+20)----- | | 755 |
| 22. 135% of "normal" domestic consumption and exports----- | | 1,019 |

Since the total supply of wheat indicated for 1941-42 (item 15) is in excess of 135% of "normal" domestic consumption and exports (item 22), a national marketing quota for wheat is necessary for the marketing year 1941-42.

143 Entered into this 8th day of January 1942.

(Signed) WEBB R. CLARK,
Dayton, Ohio,

(Signed) HARRY N. ROUTZOHN.
Dayton, Ohio,
Attorneys for Plaintiff.

(Signed) CALVIN CRAWFORD,
Leo C. Crawford
United States Attorney,
Dayton, Ohio.

(Signed) JOHN S. L. YOST,

(Signed) W. CARROLL HUNTER.

*Special Assistants to the Attorney General, Department
of Justice, Washington, D. C., Attorneys for Claude
R. Wickard, Secretary of Agriculture of the United
States.*

144 In United States District Court

*Order overruling motion of Carl R. Helke, Roy M. Baker, Homer
W. Flinsbach, and Dale Williams to dismiss complaint as to
them*

Entered March 25, 1942

This cause came on to be heard upon the motion of the defend-
ants, Carl R. Helke, Roy M. Baker, and Homer W. Flinsbach,
individually and as members of the County Agricultural Com-
servation Committee for Montgomery County, Ohio; and Dale
Williams, individually, and as described in the petition as State
Chairman for the Agricultural Conservation Committee for the
State of Ohio, by John S. L. Yost and W. Carroll Hunter,

145 Special Assistants to the Attorney General; and Calvin
Crawford, United States District Attorney, acting under
the direction of the Attorney General of the United States and
Department of Justice of the United States, to dismiss said
defendants from this complaint individually and in their official
capacity as members on the Agricultural Conservation Com-
mittees, under the Agricultural Adjustment Act of 1938, as
amended.

The Court being advised in the premises finds said motion
not well taken, and that same should be overruled.

It is therefore considered, ordered and adjudged that the mo-
tion of the defendants, Carl R. Helke, Roy M. Baker, and Homer
W. Flinsbach, individually and as members of the County Agri-

cultural Conservation Committee for Montgomery County, under the Agricultural Adjustment Act for 1938, as amended; and Dale Williams, individually and as State Chairman for the Agricultural Conservation Committee for the State of Ohio under the Agricultural Adjustment Act of 1938, as amended, should be and hereby is overruled.

To all of which findings said defendants by their counsel except.
Done this 25th day of March, 1942:

Approved:

(Signed) JOHN H. DRUFFEL,

(Signed) FLORENCE E. ALLEN,

(Signed) ROBERT R. NEVIN,

Judges.

(Signed) WEBB R. CLARK, *Attorney at Law,*
Third National Building, Dayton, Ohio.

(Signed) HARRY N. RUTZOHN, *Attorney at Law,*
Third National Building, Dayton, Ohio.
Attorneys for Plaintiff.

(Signed) JOHN S. L. YOST,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.

146 (Signed) W. CARROLL HUNTER,
Special Assistant to the Attorney General,
Department of Justice, Washington, D. C.

(Signed) CALVIN CRAWFORD,
United States Attorney,
for the Southern District of Ohio, Dayton, Ohio.
Attorneys for Defendants.

147 In United States District Court

Answer of Defendants, Carl R. Helke, Roy M. Baker, Homer W.
Flinsbach, and Dale Williams

Filed March 25, 1942

Carl R. Helke, Roy M. Baker, Homer W. Flinsbach, and Dale Williams, defendants in the above-entitled case, reserving their exceptions to the overruling of their motion to dismiss this action against them, answer the complaint herein as follows:

FIRST DEFENSE TO FIRST CAUSE OF ACTION

1. The allegations contained in paragraphs one, two, three, four, five, six, and eight of the first cause of action set forth in

the complaint are admitted, except that it is averred that the defendant Dale Williams is a member of the State Agricultural Conservation Committee for Ohio, but is not the chairman of the said committee. The chairman of said committee is Elmer F. Kruse. The County Agricultural Conservation Committee for Montgomery County, Ohio, referred to in paragraph two of the complaint, and the State Agricultural Conservation Committee for the State of Ohio, referred to in paragraph three of the complaint, are established under Section 8 (b) of the Soil Conservation and Domestic Allotment Act (U. S. C., 1940 ed., Title 16, Section 590h (b)), and the said committees, pursuant to Section 388 (a) of the Agricultural Adjustment Act of 1938 (U. S. C., 1940 Ed., Title 7, Section 1388 (a)), are utilized by the Secretary of Agriculture of the United States in the administration of the wheat marketing quota provisions of the Act last mentioned (U. S. C., 1940 Ed., Title 7, Sections 1281 et seq., as amended by 55 Stat. 203 and Public Law 384, 77th Cong., Chapter 636, 1st Session, approved December 20, 1941, 55 Stat. 872).

2. The allegations contained in paragraph seven of the first cause of action set forth in the complaint are admitted, but in this connection the defendants refer to the provisions of the Agricultural Adjustment Act of 1938, as amended as mentioned above, relating to wheat marketing quotas.

3. The defendants, in answering paragraph nine of the first cause of action set forth in the complaint, aver that farm marketing quotas for wheat are in effect under the Agricultural Adjustment Act of 1938, as amended, for the 1941 crop of wheat. Wheat produced by any farmer in excess of the farm marketing quota is, under the Act, known as the "farm marketing excess" and is declared to be available for marketing and subject to a marketing penalty. The penalty is 49 cents per bushel under the marketing program effective with respect to the 1941 crop of wheat. Each producer who has such a farm marketing excess is required to pay the marketing penalty thereon, or to store such excess, or to deliver the same to the Secretary of Agriculture of the United States. In the absence of the performance of this duty by the producer, the buyer of any wheat of the producer is required by the Act to pay the marketing penalty thereon and is given the right to deduct the amount thereof from the purchase price paid to the producer. The administrative regulations issued by the Secretary of Agriculture pursuant to the authority contained in the Act provide that all marketing penalties shall be paid to the Secretary of Agriculture through the treasurer of the appropriate county agricultural conservation committee. All wheat produced on the farm is subject to a lien in favor of the United States for the amount of the marketing penalty.

It is admitted that the acreage allotment established for the farm of the plaintiff was 11.1 acres; that the normal yield of wheat per acre for such farm was established at 20.1 bushels; and that notice of said allotment and normal yield was duly given to the plaintiff in July 1941. The defendants aver that a similar notice was given to the plaintiff in July 1940, prior to the planting of the plaintiff's 1941 crop of wheat. The defendants aver also that the plaintiff prevented the measurement of his farm, and consequently that the defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation relating to the amount of farm marketing excess of wheat for the farm of the plaintiff. The defendants deny the allegation contained in said paragraph of the complaint to the effect that the farm marketing excess of wheat applicable to the plaintiff's farm is not subject to the payment of the marketing penalty. It is further denied by the defendants that the plaintiff was notified by the County Agricultural Conservation Committee for Montgomery County, Ohio, that the farm marketing excess for his farm was 239 bushels.

4. The allegations contained in paragraph ten of the first cause of action set forth in the complaint are denied, except 150 that it is admitted that the County Agricultural Conservation Committee for Montgomery County, Ohio, acting under the administrative regulations issued by the Secretary of Agriculture, has refused to issue to the plaintiff a marketing card whereby the plaintiff may market any of the wheat produced by him without payment by the buyer of the marketing penalty in respect to the applicable farm marketing excess. In this connection, the defendants refer to the provisions of the Act as outlined above, and to the administrative regulations issued under the authority of the Act relating to the payment of marketing penalties.

5. The defendants admit the allegations contained in paragraph eleven of the first cause of action set forth in the complaint, relating to the date of the referendum and to the time when farm marketing quotas for wheat for the 1941 crop were established. In this connection, the defendants aver that farm marketing quotas for wheat for the 1941 crop became effective upon the proclamation to that effect by the Secretary of Agriculture on May 9, 1941. The remaining allegations contained in paragraph eleven are denied.

6. The allegations contained in paragraphs twelve, thirteen, fourteen, fifteen, and sixteen of the first cause of action set forth in the complaint are denied, except that it is admitted (1) that the wheat farmers of the nation were, prior to the holding of the wheat referendum on May 31, 1941, informed by the Depart-

ment of Agriculture of the salient facts of the wheat industry, and of the effects on such industry of the presence or absence of wheat marketing quotas, and (2) that the wheat marketing penalty under the Act was 15 cents a bushel instead of 49 cents a bushel at the time of the planting of the plaintiff's wheat in 1940.

151.

FIRST DEFENSE TO SECOND CAUSE OF ACTION

1. The defendants, in answering generally the second cause of action set forth in the complaint, adopt their foregoing answer to the first cause of action set forth in the complaint.

2. The defendants deny the allegations contained in paragraph one of the second cause of action set forth in the complaint, to the effect that an actual and immediate controversy exists as between the plaintiff and these defendants.

3. The defendants admit the allegations contained in paragraph two of the second cause of action set forth in the complaint to the effect that the issues raised herein are of great importance to the plaintiff and the public generally, but aver that said issues are such that they cannot be determined in this or any other proceeding against these defendants.

4. The defendants admit the allegations contained in paragraph three of the second cause of action set forth in the complaint, except that the defendants deny that the plaintiff is entitled to any of the relief prayed for in the complaint.

SECOND DEFENSE TO FIRST AND SECOND CAUSES OF ACTION

The defendants aver that this action cannot be maintained against them for the reason that said defendants have no power or authority, either as individuals or as members of the County Agricultural Conservation Committee for Montgomery County, Ohio, and the State Agricultural Conservation Committee for Ohio, respectively, to enforce the wheat marketing quota provisions of said Act or to require the plaintiff to do, or refrain from doing, any of the acts of which the plaintiff complains, or anything whatsoever.

152.

THE THIRD DEFENSE TO FIRST AND SECOND CAUSES OF ACTION

It is averred by the defendants that the applicable provisions of the Agricultural Adjustment Act of 1938, as amended, as aforesaid, under which wheat marketing quotas were established by the Secretary of Agriculture, through local committees, for wheat farms, including the farm operated by the plaintiff, constitute a

regulation of the marketing of abnormally excessive supplies of wheat as in, and as directly affecting, interstate and foreign commerce, and that the provisions of said Act which are drawn in question by the plaintiff in this case are in every respect consistent with the Constitution of the United States, and that the actions taken by said defendants with respect to wheat marketing quotas for the 1941 crop of wheat were in conformity with the provisions of said Act and the administrative regulations issued thereunder.

FOURTH DEFENSE TO FIRST AND SECOND CAUSES OF ACTION

The complaint fails to state a claim, in either the first or second causes of action, upon which relief can be granted.

(Signed) JOHN S. L. YOST,

(Signed) W. CARROLL HUNTER,

*Special Assistants to the Attorney General,
Department of Justice, Washington, D. C.*

(Signed) CALVIN CRAWFORD,

*United States Attorney
for the Southern District of Ohio, Dayton, Ohio,
Attorneys for Defendants.*

Service of a copy of the foregoing answer is hereby acknowledged this 24th day of March 1942.

(Signed) WEBB R. CLARK,

*Dayton, Ohio;
Attorney for Plaintiff.*

153

In United States District Court

Opinion of Druffel and Nevin, District Judges

Filed March 14, 1942

Before ALLEN, Circuit Judge, and NEVIN and DRUFFEL, District Judges.

DRUFFEL, District Judge:

The above entitled action was submitted to this three judge court organized under Section 3 of the Act of August 24, 1937, after argument, upon the pleadings and agreed stipulation

154 of facts from which it appears that plaintiff is a farmer who has been engaged in producing wheat among other products on a farm in Montgomery County, Ohio. Under the provisions of the Agricultural Adjustment Act of 1938 as amended, a wheat acreage allotment of 11.1 acres and a normal yield of 20.1 bushels an acre were established for plaintiff's farm in July 1940, for the 1941 wheat crop.

In the fall of 1940 plaintiff planted 23 acres of wheat which produced in July 1941, 462 bushels, which amounted to 239 bushels farm marketing excess over the fixed allotment. At the time of planting the acreage in excess of the allotment, Section 339 of the Act provided:

"Any farmer who, while farm marketing quotas are in effect, markets wheat in excess of the farm marketing quota for the farm on which such wheat was produced, shall be subject to a penalty of 15 cents per bushel of the excess so marketed."

In due time, the defendant Claude R. Wickard, Secretary of Agriculture, pursuant to the Act, issued a proclamation relating to the national marketing quota, at the same time calling for a national referendum on May 31, 1941, of wheat farmers planting more than fifteen acres of wheat (fifteen acres or less are exempt from the Act) to approve or disapprove of the quota allotment, etc., and also issued instructions as to the referendum.

On May 19, 1941, Mr. Wickard made a radio address to the farmers of the United States, in which he strongly urged an affirmative vote of more than the necessary two-thirds of eligible wheat farmers in the national referendum, saying among other things:

* * * "To make wise decisions, we need to know the facts. What then, in view of the vote on May 31, are some of the facts about wheat? For one thing, we have a record amount 155 of old wheat on hand and a bumper crop in prospect.

That is something to be looked at with satisfaction on one hand and with alarm on the other." * * * "Because of the uncertain world situation, we deliberately planted several million extra acres of wheat this year. * * * Farmers should not be penalized because they have provided insurance against shortages of food. The nation wants farmers safeguarded against unfair penalties. The nation also wants other protection given agriculture." * * * "As you all know, parity is one of the most important objectives of the national farm programs and will continue to be a goal." * * *

"Only last week, the Senate and House sent to the White House a bill calling for an 85 percent of parity loan for wheat" * * *

"But no wheat loan will be made unless wheat farmers vote for marketing quotas and without the loan there is no hope for parity on wheat in 1941. So parity for wheat is up to the wheat farmers themselves." * * *

"The law provides that wheat loans will not be made if wheat growers vote down marketing quotas. * * * The continuance—or discontinuance—of government loans on wheat is at stake in

this referendum on May 31. To put it bluntly, no quotas, no loans. And, judging from prices in Canada, rejection of marketing quotas on May 31 would just about cut the price of wheat in this country in half."

"I wish that corn and wheat farmers were able to vote on marketing quotas before they plant their crops, instead of afterwards as is the case now. Cotton, tobacco, and rice farmers vote on quotas before they plant and I see no good reason for denying this privilege to wheat and corn growers. I am sorry that the legislation authorizing loans at 85 percent of parity did not change the time for voting on wheat and corn quotas. This provision was recommended by the Department of Agriculture and we plan to recommend it to Congress again. Yet the fact that the referendum on wheat quotas comes after the crop is almost ready for harvest in no way alters the significance of the vote." * * *

In the national referendum 81% voted in favor of the marketing quotas and 19% were opposed to the quotas.

On May 26, 1941, the bill referred to by Mr. Wickard, relating to wheat marketing quotas under the Act of 1938, as amended, was approved. The Act as thus amended provided for an increase in loans on wheat equal to 85% of the parity price of wheat.

It also provided during any marketing year the quotas are in effect, the producer shall be subject to a penalty on the farm marketing excess at the rate of one-half of the basic rate of the loan on the commodity, and that the entire crop of wheat produced on the farm shall be subject to a lien in favor of the United States for the amount of the penalty.

Plaintiff for his cause of action complains that the excess of 239 bushels of wheat has been subjected to a penalty of 49 cents per bushel by the defendant county committee; that his entire crop of wheat is subject to a lien for the payment thereof, and unless paid he would be refused a marketing card, which is necessary for plaintiff to sell his crop of wheat.

By reason thereof plaintiff challenges the authority of the Secretary of Agriculture to construe said Act, as amended, retroactively as to the crop of wheat planted in the fall of 1940, and asserts that the referendum is invalid and the Act and amendments thereto are violative of Sections 4 and 9 of Article I of the Constitution and of the Fifth and Tenth Amendments thereto.

In the recent case of *Mulford et al v. Smith et al.*, 307 U. S. 38, the Supreme Court considered questions relating to the claimed retroactive operation of the Tobacco Act, and upheld the Act.

Upon analysis we believe the case at bar is clearly distinguishable from *Mulford et al. v. Smith et al.*, aside from the difference in controlling provisions of the Wheat and Tobacco Acts, and should

be placed in an entirely different category because of the circumstances surrounding the referendum and the fact that the law increasing the penalty was approved only five days prior 157 to the national referendum held in forty wheat growing states.

Considering the fact that the law increasing the penalty to one-half of the 85% parity loan and subjecting the entire wheat crop to a lien for the payment thereof became effective May 26, 1941, yet would be inoperative if more than one-third of the eligible wheat farmers opposed the quota in the May 31st referendum, it becomes important to determine whether or not the necessary two-thirds of the wheat farmers voluntarily voted affirmatively or were unintentionally misled in so voting in the referendum.

It is fully recognized by all that Congress has devoted much time in the past several years in a laudable effort to help the farmers, and as Mr. Wickard said: "parity is one of the most important objectives of the national farm programs and will continue to be a goal," and it is but natural that the several hundred thousands of wheat farmers scattered all over the United States (559,630 voted), should look to the Secretary of Agriculture for advice and direction in a matter of such importance as the quota referendum, and when in his official capacity, the Secretary, in the nation-wide radio speech appealing for an affirmative vote for the quota, eleven days prior to the referendum, said:

* * * "To make wise decisions, we need to know the facts."
 * * * "Because of the uncertain world situation, we deliberately planted several million extra acres of wheat. * * * Farmers should not be penalized because they have provided insurance against shortages of food."

it would seem that the Secretary meant what he said and that the farmers voting affirmatively would not be penalized for the

158 "deliberately planted" excess acreage beyond the law in effect at the time of planting. But the contrary was true, the bill to which Mr. Wickard referred greatly increased the penalty for the "deliberately planted" excess acreage and subjected the entire crop to a lien for the payment of the penalty.

Giving full credit to the Secretary for his zeal and his efforts to help the farmer to avoid ruinous wheat prices which he foresaw if the quota referendum failed, yet it would seem that the equities of the situation demanded that the Secretary also forewarn the farmers that in accepting the benefits of increased parity loans they were also subjecting themselves to increased penalties for the farm marketing excess.

In the *Mulford et al. v. Smith, et al.* case, 307 U. S. 38, 46, and 47, the court say:

"In the light of the fact that the appellants received notice of their quotas only a few days before the actual marketing season

opened, the maintenance of actions based upon collection of the penalties would have been a practical impossibility. We are of the opinion, therefore, that a case is stated for the interposition of a court of equity."

Here but five days intervened between the time the law became effective and the favorable referendum which made it operable.

We have no precedent in point to guide us in a determination of the precise issues raised by the foregoing state of facts. However, in cases involving the validity of gift taxes, a principle was approved which we think applicable here. The Supreme Court in *Nichols v. Coolidge*, 274 U. S. 531, 542, say:

"This court has recognized that a statute purporting to tax may be so arbitrary and capricious as to amount to confiscation and offend the Fifth Amendment."

and in *Welch v. Henry*, 305 U. S. 134, 147, say:

159 "In the cases in which this court has held invalid the taxation of gifts made and completely vested before the enactment of the taxing statute, decision was rested on the ground that the nature or amount of the tax could not reasonably have been anticipated by the taxpayer at the time of the particular voluntary act which the statute later made the taxable event." (The voluntary act in the case at bar being the affirmative vote in the referendum.)

Under the circumstances we are obliged to hold that the amendment of May 26, 1941, in so far as it increased the penalty for the farm marketing excess over the fifteen cents per bushel prevailing at the time of planting and subjected the entire crop to a lien for the payment thereof, operated retroactively and that it amounts to a taking of plaintiff's property without due process, and also, or in the alternative that the equities of the case as shown by the record favor the plaintiff.

In consideration whereof the court grants plaintiff's prayer to the extent that defendants be perpetually enjoined from collecting the penalty for the farm marketing excess over and above fifteen cents per bushel and from subjecting the entire crop to a lien for the payment thereof and from collecting said fifteen cents per bushel except in accordance with the provisions of Section 339 of the Agricultural Adjustment Act of 1938 as it was in effect prior to May 26, 1941.

In view of the foregoing we deem it unnecessary to pass on the other question raised by plaintiff's bill of complaint. *Brucker v. Fisher*, 49 F. (2d) 759-761 (C. C. A. 6); *Piedmont & N. Ry. Co. v. Query*, 56 F. (2d) 172-175.

NEVIN, District Judge Concurr.

(Signed) DRUFFEL, J.
NEVIN, J.

Dissenting opinion by Allen, Circuit Judge

Filed March 14, 1942

ALLEN, Circuit Judge, dissenting. I cannot agree with the conclusions of my colleagues. There is no equitable justification for interference by this court with the fulfillment of the declared legislative will of the nation because of the circumstances under which a marketing excess of wheat was established for plaintiff's farm.

The question of the legal effect of alleged infirmities in the referendum on quota provisions for the 1941 crop of wheat is substantially identical in every material respect with that considered by the Supreme Court in *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533. That case held that an order issued by the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act was valid and enforceable. The order fixed minimum prices to be paid producers for milk sold to dealers and disposed of by them in a designated market area comprising the city of New York and adjacent counties. Just as here, a favorable referendum of farmers was made a condition upon the operation and effectiveness of wheat marketing quotas, so in that case the Marketing Agreement Act required that an order fixing prices to the producers should be made only on condition that such provision was "approved or favored" by a specific proportion of the producers of the milk covered in such order. Title 7, U. S. C., § 608c (9) (B). There a pamphlet issued by the Department of Agriculture prior to the referendum and publications of private organizations to the effect that dealers would be required to pay all producers the uniform price established, whereas the order made it clear that the uniform price was not applicable to milk sold outside the market area or to milk handled by cooperatives. The Supreme Court held that the validity of the referendum had not been affected.

161 Here the alleged misrepresentation claimed to have vitiated the submission of the wheat quota referendum is extracted from a radio speech of the Secretary of Agriculture made some twelve days before the referendum. He said that "farmers should not be penalized because they have provided insurance against shortages of food." The plaintiff claims this language is misleading because of the provision in the amendment to the Act which increased the penalty on the farm marketing excess from 15 to 49 cents per bushel. The context of the Secretary's speech makes it clear that he was speaking of penal-

ties in the form of ruinously low prices which result from an excess supply of any basic farm commodity. No reference to enforcement provisions of any legislation, new or old, could reasonably be understood to be intended from the reference to low prices as penalties, for the Secretary went on to say:

"The nation also wants other protection given agriculture. One expression of this wish is the national farm programs. These programs protect all farmers. Since the second world war began, commodity loans have stood between wheat producers and the economic blitzkrieg.

"Without the programs, wheat prices would be threatening the low record of 1932 instead of being within striking distance of parity as they are now."

Other statements significant of the intended emphasis are as follows:

"Average prices of wheat to Kansas growers in mid-May were about 80 cents. This compares with about 45 cents to Canadian farmers (United States money). Leaving out government payments, American producers will receive over twice as much for this year's wheat as Canadian growers.

"High prices without adjustment of supply are certain to be followed by ruinously low prices. We know that from experience."

162 It is not claimed that the speech was intended to mislead producers, and considered as a whole, it would not have a natural tendency to mislead. As in *United States v. Rock Royal Cooperative, Inc.*, supra, "there is no evidence that any producer misunderstood." The Secretary declared as a fact and it is not denied that the requisite proportion of the participants voted in favor of the institution of quotas. In the language of the Supreme Court, "There is no authority in the courts to go behind this conclusion of the Secretary to inquire into the influences which caused the producers to favor" the proposed action. *United States v. Rock Royal Cooperative, Inc.*, supra.

While the plaintiff presents a case of possible hardship, I do not think that the penalty provisions operate so retroactively or so arbitrarily as to violate the Fifth Amendment.

In *Mulford v. Smith*, 307 U. S. 38, the crop of tobacco, which was subjected to a penalty insofar as it exceeded certain quotas and was marketed, had been planted in seed beds before the Act was passed, had matured and was ready for marketing before producers received notice of the quota allotted to their respective farms. In that case it was claimed that since the producers complaining were unable to process their tobacco and make it fit to be held for sale in a later year, the penalty amounted to a tax

upon production and was so oppressive as to be invalid. The Supreme Court held that the fact that certain producers had not provided facilities for processing and storing the excess tobacco was of no legal significance.

163 The distinctions which the plaintiff advances do not distinguish the Mulford case. The plaintiff complains that his entire crop of wheat is now subject to a lien in favor of the United States for the amount of the penalty. The assertion is made that "Wheat farmers, under the provisions of the Act as amended on May 26, 1941, are denied the privilege of storing their wheat, any part of it, without paying the penalty of 49 cents a bushel on all of the excess production." This statement is misleading. It is true only if storing is given the meaning of "storing without compliance with the Act," for the resolution adopted May 26, 1941 (Public Law 74—77th Congress), expressly provides (paragraph 4):

"Until the producers on any farm store, deliver to the Secretary, or pay the penalty on, the farm marketing excess of any crop of corn or wheat, the entire crop of corn or wheat, as the case may be, produced on the farm shall be subject to a lien in favor of the United States for the amount of the penalty." [Italics added.]

This clearly means that the lien and the penalty may be avoided by storage of the excess. This conclusion is reinforced by paragraph 6 of the same amendment, which reads:

"Whenever the planted acreage of the then current crop of corn or wheat on any farm is less than the farm acreage allotment for such commodity, the total amount of the commodity from any previous crops required to be stored in order to postpone or avoid payment of penalty shall be reduced by that amount which is equal to the normal production of the number of acres by which the farm acreage allotment exceeds the planted acreage. The provisions of section 326 (b) and (c) of the Act shall be applicable also to wheat."

Penalties, therefore, may be avoided by planting acreage below the allotment for a later year or by yields in a subsequent year which are below normal either for the particular farm or for the nation as a whole. Title 7, U. S. C., Section 1326 (b) and (c).

164 The Act does not purport to control production, but only sale or use. It had been passed some two and a half years before the plaintiff's crop was planted, and it is stipulated that plaintiff had notice of his farm acreage allotment in July 1940 before the planting of his 1941 crop of wheat. An exaction

is not necessarily unconstitutional because retroactive. *Milliken v. United States*, 283 U. S. 15, 21. "In each case, it is necessary to consider the nature of the tax and the circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limitation." *Welch v. Henry*, 305 U. S. 134, 147. It is not so harsh or oppressive here. While the monetary value of plaintiff's wheat crop has been so increased by the stimulating effect of the Act upon wheat prices that increased price more than compensates for any penalty that plaintiff may be required to pay, it is even more significant that plaintiff had been warned by the fact that Congress had undertaken to regulate the supply of wheat available for market by the imposition of penalties. *Milliken v. United States*, *supra*. The Act had been amended in material respects before plaintiff planted his wheat in the fall of 1940, and he could reasonably anticipate that Congress would make further amendments if they were deemed advisable. One amendment previously made showed that Congress intended to make whatever changes were appropriate to avoid circumvention of the basic purposes of the Act, for it had expanded the meaning of "market" so as to include in the case of wheat, feeding to poultry or livestock. 54 Stat. 727, Sec. 3, approved July 2, 1940.

165 Congress may impose penalties in aid of the exercise of any of its granted powers. *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381, 393. The authority of the Federal Government over interstate commerce does not differ in extent or character from that retained by the states over matters within their jurisdiction. *United States v. Rock Royal Cooperative, Inc.*, *supra*, at 569, 570. If the commerce clause is a sufficient source of power, controls adopted in its exercise are unconstitutional "only if arbitrary, discriminating, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty." *Nebbie v. New York*, 291 U. S. 502, 539. Here the classification of wheat subject to penalty and wheat free from penalty is an "integral and essential feature" of the Act. Adequate administrative procedure with court review has been provided to insure fair allocation of quotas. Cf. *R. R. Commission of Texas v. Rowan & Nichols Oil Co.*, 310 U. S. 573, 311 U. S. 614; *ibid.*, 311 U. S. 570. Discrimination between cooperating and noncooperating producers is a constitutional means of securing compliance. * * * the Fifth Amendment, unlike the Fourteenth, has no equal protection clause." *Sunshine Anthracite Coal Co. v. Adkins*, *supra*, at 401.

The Act as applied to wheat is a valid exercise of the federal commerce power. The tobacco marketing quota provisions have

been so upheld. *Mulford v. Smith*, supra. A like decision has been reached as to the provisions relating to cotton. *Troppy v. LaSara Farmers Gin Co., Inc.*, 113 Fed. (2d) 350 (C. C. A. 5).

Denial of the same validity to wheat regulation, as a regulation of interstate and foreign commerce, as has been accorded to the tobacco and cotton regulations of the Act, would result in an incongruous exercise of the federal commerce power.

It is no longer open to question that Congress has the power to protect interstate commerce "from interference or injury due to activities which are wholly intrastate." *National Labor Relations Board v. Fainblatt*, 306 U. S. 601. "Activities conducted within state lines do not by this fact alone escape the sweep of the Commerce Clause. Interstate commerce may be dependent upon them." *United States v. Rock Royal Co-operative, Inc.*, supra, at 569.

It is true that Congress has no power to regulate intrastate transactions which affect commerce only indirectly. *A. L. A. Schechter Poultry Corp. v. United States*, 295 U. S. 495. But where it is claimed that the local activity sought to be regulated does not directly affect commerce, decision should not be made by examination of the effect of isolated individual activity, but must include due regard to the total effect of the attempted regulation. *United States v. Darby*, 312 U. S. 100, 123.

Title 7, U. S. C., Section 1331, reads as follows:

"Wheat is a basic source of food for the Nation, is produced throughout the United States by more than a million farmers, is sold on the country-wide market and, as wheat or flour, flows almost entirely through instrumentalities of interstate and foreign commerce from producers to consumers.

"Abnormally excessive and abnormally deficient supplies of wheat on the country-wide market acutely and directly affect, burden, and obstruct interstate and foreign commerce. Abnormally excessive supplies overtax the facilities of interstate and foreign transportation, congest terminal markets and milling centers in the flow of wheat from producers to consumers, depress the price of wheat in interstate and foreign commerce, and otherwise disrupt the orderly marketing of such commodity in such commerce. Abnormally deficient supplies result in an adequate flow of wheat and its products in interstate and foreign commerce with consequent injurious effects to the instrumentalities of such commerce and with excessive increases in the prices of wheat and its products in interstate and foreign commerce.

"The conditions affecting the production and marketing of wheat are such that, without Federal assistance, farmers, individually or in cooperation, cannot effectively prevent the recurrence of such surpluses and shortages and the burdens on interstate and foreign commerce resulting therefrom, maintain normal supplies of wheat, or provide for the orderly marketing thereof in interstate and foreign commerce.

" * * * The provisions hereof for regulation of marketings by producers of wheat whenever an abnormally excessive supply of such commodity exists are necessary in order to maintain an orderly flow of wheat in interstate and foreign commerce under such conditions."

The stipulation of facts now before us amply supports these legislative findings. It follows that the power to regulate the supply of wheat that normally moves in interstate or foreign commerce must be upheld as appropriate means reasonably adapted to the regulation of interstate commerce. Since regulation of the supply of wheat available for sale in interstate commerce but actually used within the state of its origin is drawn into a general plan for the protection of interstate commerce in the commodity from the interferences, burdens, and obstructions arising from excessive surplus and the social evils of low values, the power of Congress extends to it as well. *United States v. Rock Royal Co-operative, Inc.*, supra, at 569. The regulation of prices there upheld had no more direct or substantial relation to the flow of goods in interstate commerce than does control of supply. The local activities regulated not only affect interstate commerce but also affect the

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exercise of the granted power of Congress to regulate interstate commerce in sufficient measure so that such regulation is an appropriate and, hence, permissible means of attaining that legitimate end. See *United States v. Darby*, supra, at 118.

The bill of complaint should be dismissed.

(Signed) ALLEN, Circuit Judge.

169

In United States District Court

Findings of fact and conclusions of law

Filed March 25, 1942

Plaintiff demands judgment against the defendants whereby the defendants may be permanently enjoined from enforcing against the plaintiff the provisions of the Agricultural Adjustment Act of 1938, as amended, relating to wheat marketing quotas, and whereby the applicable provisions of the act may be declared invalid.

170 The grounds for the relief sought by the plaintiff are that the wheat marketing quota provisions of the act, as amended May 26, 1941 (55 Stat. 203), are not within the power of the Congress under the Constitution to regulate interstate and foreign commerce, and that the requirement under the amendment/aforsaid that the plaintiff shall pay a wheat marketing penalty, computed under the amendment at 49 cents a bushel, on the plaintiff's farm marketing excess of the 1941 crop of wheat which was planted before the said amendment became effective is inconsistent with due process of law.

Claude R. Wickard, Secretary of Agriculture, a defendant herein, has waived his objection heretofore made to the maintenance of this suit against him, upon the ground of improper venue, and has filed his answer to the complaint herein. The remaining defendants have, by motion, resisted the granting of the relief prayed against them, upon the ground that they are without power to enforce against the plaintiff, or any other producer, the wheat marketing quota provisions of the act, but said defendants indicated at the hearing herein that, in the event of the overruling by the court of their motion to dismiss the case as against them, they would, reserving exceptions to the overruling of said motion, file an answer to the complaint herein which would be similar to the answer of the Secretary of Agriculture, and that the said answer should have the same effect as though the answer had been filed prior to the time of the hearing herein.

The case was heard upon a stipulation of facts before a statutory three-judge court convened under Section 3 of 171 the Act of August 24, 1937. In accordance with the requirements of Rule 52 of the Federal Rules of Civil Procedure, the court makes findings of facts and states its conclusions thereon as follows:

FINDINGS OF FACT

The court finds the facts to be as set forth in the written stipulation filed by the parties and specifically finds:

I

Plaintiff is a farmer who has for many years past been engaged in producing wheat on the farm situated in Montgomery County, Ohio, and owned by him. The plaintiff maintains on his farm a herd of dairy cattle and produces and sells milk. The wheat produced by the plaintiff is winter wheat, which is planted in the fall. The 1941 crop of wheat harvested by the plaintiff, consisting of 23 acres, was planted by him in the fall of 1940. Said crop was ready for harvest during the month of July, 1941, and the plaintiff harvested 462 bushels of wheat.

II

A wheat acreage allotment of 11.1 acres and a normal yield of wheat of 20.1 bushels an acre were established for the farm of the plaintiff in July, 1940, for the 1941 crop of wheat. Said allotment and normal yield were established by the Secretary of Agriculture through the County Agricultural Conservation Committee for Montgomery County, Ohio, in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended, and the administrative regulations issued by the Secretary of Agriculture under the authority contained in the act. The plaintiff
172 received notice thereof in July, 1940, before the planting of his 1941 crop of wheat and also in July, 1941, before the said crop was harvested by the plaintiff.

III

It has been the practice of the plaintiff to dispose of the wheat produced by him in the following manner:

- (a) To sell a portion thereof,
- (b) To feed part of the same to poultry and livestock which, or the products of which, are in part sold by him and in part consumed on his farm,
- (c) To use a part of the same for grinding into flour for home consumption,
- (d) To retain a part of the same for use as seed for the ensuing crop of wheat.

IV

The plaintiff's farm marketing excess for his 1941 crop of wheat amounts to 239 bushels in respect to which the applicable marketing penalty prescribed by said act, as amended May 26, 1941, amounts to \$117.11. The plaintiff has not paid the marketing penalty aforesaid and he has neither stored the farm marketing excess nor delivered same to the Secretary of Agriculture as provided by the administrative regulations issued by the Secretary of Agriculture under the authority contained in the act. The said county committee has, therefore, acting under the authority of the act and of the administrative regulations issued thereunder, refused to issue to the plaintiff a marketing card.

V

That on May 9, 1941, acting under and by virtue of said Agricultural Adjustment Act of 1938, as amended, said
173 defendant, Claude B. Wickard, as Secretary of Agriculture

of the United States of America, issued a proclamation calling for a national referendum on May 31, 1941, of wheat farmers throughout the United States of America who had planted wheat in the fall of 1940, to be harvested in 1941, for the approval or disapproval of a national wheat marketing quota for the year 1941.

VI

That on May 19, 1941, said defendant, Claude R. Wickard, as Secretary aforesaid, made a radio address to the wheat farmers of the United States of America in which he strongly urged an affirmative vote in said referendum, stating, among other things, the following:

* * * "To make wise decisions, we need to know the facts. What then, in view of the vote on May 31, are some of the facts about wheat? For one thing, we have a record amount of old wheat on hand and a bumper crop in prospect. That is something to be looked at with satisfaction on one hand and with alarm on the other." * * * "Because of the uncertain world situation, we deliberately planted several million extra acres of wheat this year. * * * Farmers should not be penalized because they have provided insurance against shortages of food. The nation wants farmers safeguarded against unfair penalties. The nation also wants other protection given agriculture." * * * "As you all know, parity is one of the most important objectives of the national farm program and will continue to be a goal." * * *

"Only last week, the Senate and House sent to the White House a bill calling for an 86 percent of parity loan for wheat" * * *

"But no wheat loan will be made unless wheat farmers vote for marketing quotas and without the loan there is no hope for parity on wheat in 1941. So parity for wheat is up to the wheat farmers themselves." * * *

174 "The law provides that wheat loans will not be made if wheat growers vote down marketing quotas. * * * The continuance—or discontinuance—of government loans on wheat is at stake in this referendum on May 31. To put it bluntly, no quotas, no loans. And, judging from prices in Canada, rejection of marketing quotas on May 31 would just about cut the price of wheat in this country in half." * * *

"I wish that corn and wheat farmers were able to vote on marketing quotas before they plant their crops, instead of afterwards as is the case now. Cotton, tobacco and rice farmers vote on quotas before they plant and I see no good reason for denying this privilege to wheat and corn growers. I am sorry that the

legislation authorizing loans at 85 percent of parity did not change the time for voting on wheat and corn quotas. This provision was recommended by the Department of Agriculture and we plan to recommend it to Congress again. Yet the fact that the referendum on wheat quotas comes after the crop is almost ready for harvest in no way alters the significance of the vote." * * *

VII

That said national referendum was held on May 31, 1941, and the said Claude R. Wickard as Secretary aforesaid published the result thereof to the effect that 81% of those voting in the said referendum favored the said marketing quota and that 19% of those voting opposed the same.

VIII

That on May 26, 1941, the Congress of the United States of America passed a joint resolution in effect amending and superseding the penalty provisions, relating to wheat, of said Agricultural Adjustment Act of 1938, as amended, to wit, Section 339, and modifying among other things the penalty of 15 cents per bushel for all excess wheat marketed as aforesaid, and providing a penalty of 49 cents per bushel on all wheat produced in excess of the quota and subjecting the entire crop of plaintiff's wheat, harvested in 1941, to a lien for the payment of said 49-cent penalty.

IX

That because of the increase in said penalty aforesaid, and of the attachment thereto of a lien on the entire crop of plaintiff's wheat, plaintiff, as well as others similarly situated, was misled by the aforesaid speech of May 19, 1941, and that said amendment of May 26, 1941, insofar as it increased the penalty for the farm marketing excess of 15 cents per bushel prevailing at the time of the planting of plaintiff's wheat, and subjected the entire crop to a lien for the payment thereof, operated retroactively, amounting to a taking of plaintiff's property without due process of law, and also, or in the alternative, against the equities favoring plaintiff.

CONCLUSIONS OF LAW

1. The wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended May 26, 1941, in so far as said provisions subjected plaintiff's farm marketing excess of

wheat of the 1941 crop, at the time such excess became available for marketing, to the marketing penalty of 49 cents per bushel computed under said amendment are invalid.

2. The amendment of May 26, 1941, to the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, in so far as said amendment increased the wheat marketing penalty on the plaintiff's farm marketing excess of the 1941 crop of wheat from 15 cents to 49 cents a bushel and subjected the plaintiff's entire 1941 crop of wheat to a lien for payment of the penalty, after the plaintiff had planted the said crop of wheat in 1940, constitutes a denial to the plaintiff of due process of law.

3. The referendum held May 31, 1941, pursuant to Section 336 of the Agricultural Adjustment Act of 1938 was inoperative to make farm marketing quotas for the 1941 crop of wheat subject to the provisions of the amendment of May 26, 1941 (55 Stat. 203).

4. The amendment of May 26, 1941, to the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, in so far as said amendment related to the 1941 crop of wheat, is invalid because of the failure of the Secretary of Agriculture to forewarn wheat farmers, in his radio address made on May 19, 1941, of the increase in the marketing penalty as provided by such amendment.

5. The plaintiff's farm marketing excess of his 1941 crop of wheat is subject to the penalty of 15 cents per bushel prescribed by Section 339 of the Agricultural Adjustment Act of 1938, as said section was in effect prior to the amendment of May 26, 1941, and such penalty may be collected only as therein provided.

6. This action may be maintained against the defendants herein other than the Secretary of Agriculture.

ALLEN, Circuit Judge, dissents from Finding of Fact No. IX and from all Conclusions of Law.

(Signed) JOHN H. DRUFFEL,
United States District Judge.

(Signed) ROBERT R. NEVIN,
United States District Judge.

Approved as to form:

(Signed) WEBB R. CLARK,

(Signed) HARRY N. RUTZOHN,

Attorneys for Plaintiff.

(Signed) JOHN S. L. YOST,

(Signed) W. CARROLL HUNTER,

Special Assistants to the Attorney General.

Attorneys for Defendants.

In United States District Court

Judgment

Entered March 25, 1942

This cause came on for final hearing on January 30, 1942, before a statutory three-judge court convened pursuant to Section 3 of the Act of August 24, 1937 (50 Stat. 752, U. S. C., 1940 Ed., Title 28, Sec. 380a). The court has rendered its opinion, made its findings of fact, and stated its conclusions of law.

178 It is, therefore, ordered, adjudged, and decreed that the defendants Carl R. Helke, Roy M. Baker, and Homer W. Flinsbach, individually and as members of the Agricultural Conservation Committee for Montgomery County, Ohio, and Dale Williams, individually and as a member of the State Agricultural Conservation Committee for the State of Ohio, the said county committee and the said State committee being utilized by the Secretary of Agriculture of the United States in the administration of the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, and Claude R. Wickard, individually and as Secretary of Agriculture of the United States, be, and they are hereby, permanently enjoined from collecting a marketing penalty of more than 15 cents a bushel on the farm marketing excess of the 1941 crop of wheat of Roscoe C. Filburn, the plaintiff herein, and from subjecting the 1941 wheat crop of the said plaintiff to a lien for the payment of said penalty and also from collecting the said penalty of 15 cents a bushel except in accordance with the provisions of Section 339 of Title III of the Agricultural Adjustment Act of 1938, as amended, as it was in effect prior to May 26, 1941.

Done this 25th day of March 1942.

(Signed) JOHN H. DRUFFEL, *District Judge.*

(Signed) ROBERT R. NEVIN, *District Judge.*

Approved as to form:

(Signed) WEBB R. CLARK,

(Signed) HARRY N. RUTZOHN,

Attorneys for plaintiff.

(Signed) JOHN S. L. YOST,

(Signed) W. CARROLL HUNTER,

Special Assistants to the Attorney General.

(Signed) CALVIN CRAWFORD,

Attorneys for Defendants.

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In United States District Court

Petition for appeal and order thereon

Filed March 25, 1942

To the Honorable, the Judges of said Court:

Claude R. Wickard, Secretary of Agriculture; Carl R. Helke, Roy M. Baker, and Homer W. Flinsbach, individually and as members of the County Agricultural Conservation Committee for Montgomery County, Ohio; and Dale Williams, individually and as a member of the State Agricultural Conservation Committee for the State of Ohio, being aggrieved by the final judgment entered on March 25th, 1942, in the above-entitled cause, hereby pray that they be allowed an appeal to the Supreme Court of the United States for a reversal of said judgment; and that a transcript of the record in this cause, duly authenticated, be sent to the Supreme Court of the United States.

(Signed) JOHN S. L. YOST,

(Signed) W. CARROLL HUNTER,
*Special Assistants to the Attorney General,
Attorneys for Defendants.*

It is ordered that the appeal be allowed as prayed for. This 25th day of March 1942.

(Signed) FLORENCE E. ALLEN,
United States Circuit Judge.

(Signed) JOHN H. DRUFFEL,
United States District Judge.

(Signed) ROBERT R. NEVIN,
United States District Judge.

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In United States District Court

Assignment of errors

Filed March 25, 1942

Defendants-Appellants assert that the statutory district court erred in rendering the final judgment entered March 25, 1942, against them, and say that in the said final judgment said Court erred in the following particulars:

1. In holding invalid the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended May 26, 1941, in so far as said provisions subjected plaintiff's farm marketing excess of wheat of the 1941 crop at the time such excess became available for marketing to the marketing penalty of 49 cents per bushel computed under said amendment.

2. In holding that the amendment of May 26, 1941, to the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, in so far as said amendment increased the wheat marketing penalty on the plaintiff's farm marketing excess of the 1941 crop of wheat from 15 cents to 49 cents a bushel and subjected the plaintiff's entire 1941 crop of wheat to a lien for payment of the penalty, after the plaintiff had planted the said crop of wheat in 1940, constitutes a denial to the plaintiff of due process of law.

118 3. In holding that the referendum held May 31, 1941, pursuant to Section 336 of the Agricultural Adjustment Act of 1938 was in operative to make farm marketing quotas for the 1941 crop of wheat subject to the provisions of the Amendment of May 26, 1941 (55 Stat. 203).

4. In holding invalid the amendment of May 26, 1941, to the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, in so far as the amendment related to the 1941 crop of wheat, because of the failure of the Secretary of Agriculture to make any specific reference, in a radio address to wheat farmers made on May 19, 1941, to the increase in the marketing penalty as provided by such amendment.

5. In holding that this action may be maintained against the defendants herein other than the Secretary of Agriculture.

Wherefore, Defendants-Appellants pray that the errors assigned above be reviewed and corrected by the Supreme Court of the United States and that the judgment entered in this case be reversed.

(Signed) JOHN S. L. YOST,

(Signed) W. CARROLL HUNTER,
Special Assistants to the Attorney General,
Attorneys for Defendants-Appellants.

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In United States District Court

Stipulation as to contents of transcript of record on appeal

Filed March 25, 1942

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys, that the transcript of

record to be filed in the Supreme Court of the United States pursuant to the appeal heretofore allowed herein shall include the following:

- (1) Complaint filed herein July 14, 1941.
- (2) Designation by the Honorable Charles C. Simons, Acting Senior United States Circuit Judge for the Sixth Judicial Circuit, of the Honorable Florence E. Allen and the Honorable John H. Druffel to sit with the Honorable Robert R. Nevin as a statutory three-judge Court to hear the case, filed December 22, 1941.
- (3) Motion to dismiss, filed on behalf of all defendants other than Claude R. Wickard, Secretary of Agriculture of the United States, on August 16, 1941.
- (4) Waiver of objection to venue filed on behalf of the defendant, Claude R. Wickard, Secretary of Agriculture of the United States, January 22, 1942.
- (5) Answer of defendant, Claude R. Wickard, Secretary of Agriculture of the United States, filed January 22, 1942.
- 184 (6) Stipulation of facts and evidence, with exhibits thereto, filed January 22, 1942.
- (7) Order overruling motion to dismiss complaint as to defendants other than Claude R. Wickard, Secretary of Agriculture, entered March 25, 1942.
- (8) Answer of defendants other than Claude R. Wickard, Secretary of Agriculture, filed March 25, 1942.
- (9) Opinions filed March 14, 1942.
- (10) Findings of fact and conclusions of law made and filed March 25, 1942.
- (11) Final judgment entered March 25, 1942.
- (12) Petition for, and order allowing, appeal filed March 25, 1942.
- (13) Assignment of errors, filed March 25, 1942.
- (14) The jurisdictional statement under Rule 12 of the Revised Rules of the Supreme Court of the United States, together with the opinions attached thereto, filed March 25, 1942.
- (15) The waiver of issuance, and service, of citation to the appellee upon appeal and acknowledgment of service of appeal papers, and waiver of right to file opposing jurisdictional statement, filed March 25, 1942.
- (16) This stipulation as to the contents of the transcript of record, filed March 25, 1942.

It is further stipulated that the attached copies of Items 1 to 16, inclusive, mentioned above, are true and correct copies of the originals on file in the Office of the Clerk of the Court, and may be certified to the Supreme Court of the United States by the

Clerk of this Court as true and correct copies without comparison thereof with the originals.

The Clerk of this Court is requested to transmit to the Clerk of the Supreme Court of the United States, Washington, D. C., only the papers designated herein.

This stipulation is made and entered into pursuant to Rule 10 of the Supreme Court of the United States.

185 Dated this 25th day of March 1942.

(Signed) JOHN S. L. YOST,

(Signed) W. CARROLL HUNTER,

*Special Assistants to the Attorney General,
Attorneys for Defendants-Appellants.*

(Signed) WEBB R. CLARK,

(Signed) HARRY N. RUTZOHN,

Attorneys for Plaintiff-Appellee.

186 [Clerk's certificate to foregoing transcript omitted in printing]

187 In Supreme Court of the United States

*Statement of points to be relied on and designation of the parts
of the record to be printed*

Filed March 28, 1942

Come now the appellants in the above styled cause and adopt their assignment of errors as their statement of points to be relied on, and state that the entire record in this cause, as filed in this Court, is necessary for the consideration of the foregoing points, and that the entire transcript of record as transmitted by the Clerk of the District Court should be printed by the Clerk of this Court.

CHARLES FAHY,

Charles Fahy,

Solicitor General of the United States.

Service acknowledged.

Counsel for appellee.

[File endorsement omitted.]

Supreme Court of the United States

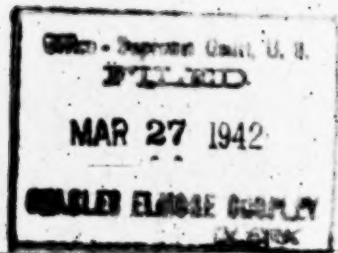
Order noting probable jurisdiction

March 30, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsement on cover:] File No. 46408. S. Ohio, D. C. U. S., Term No. 1080. Claude R. Wickard, Secretary of Agriculture of the United States, et al., Appellants vs. Roscoe C. Filburn. Filed March 27, 1942. Term No. 1080 O. T. 1941.

FILE COPY



No. 1080 59

In the Supreme Court of the United States

OCTOBER TERM, 1941

CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE
OF THE UNITED STATES, ET AL., APPELLANTS

v.

ROSCOE C. FILBURN

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF OHIO

STATEMENT AS TO JURISDICTION



**In the District Court of the United States
for the Southern District of Ohio, West-
ern Division**

CIVIL No. 118

ROSCOE C. FILBURN, PLAINTIFF

v.

CARL R. HELKE ET AL., DEFENDANTS

STATEMENT AS TO JURISDICTION

(Filed March 25, 1942)

In compliance with Rule 12 of the Supreme Court of the United States as amended, Claude R. Wickard, Secretary of Agriculture, Carl R. Helke, Roy M. Baker, and Homer W. Flinsbach, individually and as members of the County Agricultural Conservation Committee for Montgomery County, Ohio, and Dale Williams, individually and as a member of the State Agricultural Conservation Committee for the State of Ohio, submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court, entered in this cause on March 25, 1942. A petition for appeal was filed on March

25, 1942, and is presented to the District Court herewith, to wit, on the 25th day of March 1942.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 3 of the Act of August 24, 1937, 50 Stat. 752 (28 U. S. C. sec. 380 (a)).

The decision in *Mulford v. Smith*, 307 U. S. 38, sustains the direct appellate jurisdiction of the Supreme Court to review the judgment in this cause on the ground that a district court convened pursuant to the provisions of Section 3 of the Act of August 24, 1937, 50 Stat. 752, has granted an injunction against the enforcement of an act of Congress for the reason that the enforcement of said act would violate the Constitution of the United States.

STATUTE INVOLVED

The statute of the United States the provisions of which were held unconstitutional is the Act of February 16, 1938, Public, No. 430, 75th Congress, 52 Stat. 31, as amended (7 U. S. C., Sec. 1281, *et seq.*), as further amended by the Act of May 26, 1941, Public, No. 74, 77th Congress (55 Stat. 203), and as amended by the Act of December 26, 1941, Public, No. 384, 77th Congress (55 Stat. 872). The pertinent provisions are set forth in an appendix attached hereto.

THE ISSUES

The plaintiff-appellee filed this suit on July 14, 1941, to enjoin the collection of penalties provided for in the Act of May 26, 1941, amending the Agricultural Adjustment Act of 1938. The plaintiff-appellee is a wheat producer who, prior to the enactment of the amendment, had planted wheat in excess of the acreage allotment fixed for him by the Secretary of Agriculture pursuant to the provisions of the Agricultural Adjustment Act of 1938. The complaint alleged that the increased penalties were about to be applied to an amount of the wheat produced by plaintiff-appellee which was available for marketing in excess of his quota. It was charged not only that the statute as amended is unconstitutional but that the provisions of the amendment increasing the penalties would deprive the plaintiff-appellee of due process of law if applied to the wheat which he had under cultivation at the time the amendment was enacted and became effective. By stipulation between the parties, it was agreed that the issues presented were as follows:

1. Whether the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938 as amended constitute a valid exercise of the power of the Congress to regulate interstate and foreign commerce.

2. Whether the wheat marketing penalty prescribed by the said act may be made applicable, as

provided by the Congress in the act, to the plaintiff's farm marketing excess of wheat which is available for marketing but which has not actually been disposed of by the plaintiff.

3. Whether the wheat marketing quota provisions of the act, as applied to the plaintiff's 1941 crop of wheat which was planted and practically ready for harvest before farm wheat marketing quotas became effective under the said act, are consistent with due process of law.

4. Whether the increase under an amendment to the said act in the rate of the marketing penalty from 15 cents a bushel to 49 cents a bushel after the plaintiff's 1941 crop of wheat was planted and practically ready for harvest is consistent with due process of law.

THE RULING OF THE DISTRICT COURT

The specially constituted District Court granted an injunction against enforcement of the statutory penalty. Circuit Judge Florence E. Allen dissented from the ruling and filed an opinion sustaining the validity of the statute on each issue raised.

The majority of the court did not pass upon the validity of the statute as a regulation of commerce, nor did it decide whether the statute might validly be applied to wheat which had not been disposed of by the plaintiff-appellee. They held, however, that the increased penalties were invalid

as applied to wheat under cultivation at the time the increased penalties were enacted and became effective. The opinion clearly indicates that the Government could enforce the much smaller penalties which were in effect at the time plaintiff-appellee's wheat was planted.

The majority of the District Court distinguished the decision in *Mulford v. Smith*, 307 U. S. 38, apparently on the primary ground that there was some irregularity in the referendum of wheat producers which was conducted, pursuant to the provisions of the statute, as a condition precedent to the amendments becoming effective. That referendum was conducted on May 31, 1941. On May 19, 1941, the Secretary of Agriculture made a radio speech to wheat farmers discussing the importance of putting into effect the forthcoming amendment of May 26, 1941, to the wheat marketing provisions of the Agricultural Adjustment Act. The majority of the District Court found that the Secretary had misled the producers by failing to refer to the proposed increase in the penalties for marketing wheat in excess of the quota allotments.

THE QUESTIONS ARE SUBSTANTIAL

The questions involved are substantial and of great public importance. The decision of the District Court invalidates the Act of May 26, 1941, in its application to the 1941 wheat crop. If the

decision is followed by other courts the result will be that the Government can collect, at most, penalties amounting to only a fraction of the penalties provided by Congress for failure to abide by quota allotments in the production of wheat.

We believe that the ruling of the majority of the District Court is contrary to the ruling of the Supreme Court in *Mulford v. Smith*, 307 U. S. 38. There the Court sustained provisions of the Agricultural Adjustment Act of 1938 which established penalties for marketing flue-cured tobacco in excess of marketing quotas. The penalties there involved were not merely increased but were enacted for the first time after the tobacco was in the course of being prepared for market. However, the Supreme Court held that the penalties were not retroactive because they applied to "marketing" and the penalties were enacted prior to the "marketing" of the tobacco.

Aside from the merits of the contention, the alleged misleading statements by the Secretary of Agriculture afford no basis for invalidating the referendum by which the new program established by the Act of May 26, 1941, became effective. A similar attack upon a referendum conducted by the Secretary of Agriculture under the Agricultural Adjustment Act was rejected by the Supreme Court in *United States v. Rock Royal Co-op.*, 307 U. S. 533.

There are at present numerous cases pending in district courts which involve the validity of the

statute considered in this case. An authoritative decision will dispose of many of those cases and will settle important questions as to the applicability of the Agricultural Adjustment Act as amended to wheat crops for years subsequent to 1941.

Respectfully submitted.

(Signed) CHARLES FAHY,
Solicitor General.

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APPENDIX TO JURISDICTIONAL STATEMENT

COMPILATION OF PERTINENT WHEAT MARKETING QUOTA PROVISIONS OF AGRICULTURAL ADJUSTMENT ACT OF 1938, AS AMENDED

Prefatory Note

Throughout this compilation italics is used to indicate amendments to the original text.

* * * * *

Citations are contained in parentheses at the end of the section or subsection concerned. Note references appearing in any section or subsection refer to explanatory matter at the end of such section or subsection.

Whenever a change has been made having the effect of an amendment but not specifically designated as an amendment, the new material, or a citation thereto, is included in brackets immediately after the title, section, or subsection affected.

* * * * *

PART II—AGRICULTURAL ADJUSTMENT ACT OF 1938, AS AMENDED

AN ACT

To provide for the conservation of national soil resources and to provide an adequate and balanced flow of agricultural commodities in interstate and foreign commerce and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in

Congress assembled, That this Act may be cited as the "Agricultural Adjustment Act of 1938". (7 U. S. C. 1940 ed. 1281, February 16, 1938, 52 Stat. 31.)

Declaration of Policy

SEC. 2. It is hereby declared to be the policy of Congress to continue the Soil Conservation and Domestic Allotment Act, as amended, for the purpose of conserving national resources, preventing the wasteful use of soil fertility, and of preserving, maintaining, and rebuilding the farm and ranch land resources in the national public interest; to accomplish these purposes through the encouragement of soil-building and soil-conserving crops and practices; to assist in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices. (7 U. S. C. 1940 ed. 1282, February 16, 1938, 52 Stat. 31.)

TITLE III—LOANS, PARITY PAYMENTS, CONSUMER SAFEGUARDS, AND MARKETING QUOTAS

SUBTITLE A—DEFINITIONS, LOANS, PARITY PAYMENTS, AND CONSUMER SAFEGUARDS

Definitions

SEC. 301. (a) *General definitions.*—For the purposes of this title and the declaration of policy—

* * * * *

(3) The term “interstate and foreign commerce” means sale, marketing, trade, and traffic between any State or Territory or the District of Columbia or Puerto Rico, and any place outside thereof; or between points within the same State or Territory or within the District of Columbia or Puerto Rico, through any place outside thereof; or within any Territory or within the District of Columbia or Puerto Rico.

(4) The term “affect interstate and foreign commerce” means, among other things, in such commerce, or to burden or obstruct such commerce or the free and orderly flow thereof; or to create or tend to create a surplus of any agricultural commodity which burdens or obstructs such commerce or the free and orderly flow thereof.

* * * * *

(b) *Definitions applicable to one or more commodities.*—For the purposes of this title—

* * * * *

^b(6) (A) “Market”, in the case of corn, cotton, rice, tobacco, and wheat, means to dispose of, in raw or processed form, by voluntary or involuntary sale, barter, or exchange, or by gift inter

vivos, and, in the case of corn and wheat, by feeding (in any form) to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, or to be so disposed of, but does not include disposing of any of such commodities as premium to the Federal Crop Insurance Corporation under title V.

(B) "Marketed", "marketing", and "for market" shall have corresponding meanings to the term "market" in the connection in which they are used.¹

SUBTITLE B

PART III.—MARKETING QUOTAS—WHEAT

Legislative Findings

SEC. 331. Wheat is a basic source of food for the Nation, is produced throughout the United States by more than a million farmers, is sold on the

¹ Matter from ^b to ^b substituted July 2, 1940, by 54 Stat. 727, in lieu of the following: "(6) (A) 'Market', in the case of cotton, wheat, and tobacco, means to dispose of by sale, barter, or exchange, but in the case of wheat, does not include disposing of wheat as premium to the Federal Crop Insurance Corporation under Title V.

"(B) 'Market', in the case of corn, means to dispose of by sale, barter, or exchange, or by feeding (in any form) to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, or to be so disposed of.

"(C) 'Market', in the case of rice, means to dispose of by sale, barter, or exchange of rice used or to be used for human consumption.

"(D) 'Marketed', 'marketing', and 'for market' shall have corresponding meanings to the term 'market' in the connection in which they are used."

country-wide market and, as wheat or flour, flows almost entirely through instrumentalities of interstate and foreign commerce from producers to consumers.

Abnormally excessive and abnormally deficient supplies of wheat on the country-wide market acutely and directly affect, burden, and obstruct interstate and foreign commerce. Abnormally excessive supplies overtax the facilities of interstate and foreign transportation, congest terminal markets and milling centers in the flow of wheat from producers to consumers, depress the price of wheat in interstate and foreign commerce, and otherwise disrupt the orderly marketing of such commodity in such commerce. Abnormally deficient supplies result in an inadequate flow of wheat and its products in interstate and foreign commerce with consequent injurious effects to the instrumentalities of such commerce and with excessive increases in the prices of wheat and its products in interstate and foreign commerce.

It is in the interest of the general welfare that interstate and foreign commerce in wheat and its products be protected from such burdensome surpluses and distressing shortages, and that a supply of wheat be maintained which is adequate to meet domestic consumption and export requirements in years of drought, flood, and other adverse conditions as well as in years of plenty, and that the soil resources of the Nation be not wasted in the production of such burdensome surpluses. Such surpluses result in disastrously low prices of wheat and other grains to wheat producers, destroy the purchasing power of grain producers for indus-

trial products, and reduce the value of the agricultural assets supporting the national credit structure. Such shortages of wheat result in unreasonably high prices of flour and bread to consumers and loss of market outlets by wheat producers.

The conditions affecting the production and marketing of wheat are such that, without Federal assistance, farmers, individually or in cooperation, cannot effectively prevent the recurrence of such surpluses and shortages and the burdens on interstate and foreign commerce resulting therefrom, maintain normal supplies of wheat, or provide for the orderly marketing thereof in interstate and foreign commerce.

The provisions of this Part affording a cooperative plan to wheat producers are necessary in order to minimize recurring surpluses and shortages of wheat in interstate and foreign commerce, to provide for the maintenance of adequate reserve supplies thereof, and to provide for an adequate flow of wheat and its products in interstate and foreign commerce. The provisions hereof for regulation of marketings by producers of wheat whenever an abnormally excessive supply of such commodity exists are necessary in order to maintain an orderly flow of wheat in interstate and foreign commerce under such conditions. (7 U. S. C. 1940 ed. 1331, February 16, 1938, 52 Stat. 52.)

Proclamations of Supplies and Allotments

SEC. 332. Not later than July 15 of each marketing year for wheat, the Secretary shall ascertain

and proclaim the total supply and the normal supply of wheat for such marketing year, and the national acreage allotment for the next crop of wheat. (7 U. S. C. 1940 ed. 1332, February 16, 1938, 52 Stat. 53.)

National Acreage Allotment

SEC. 333. The national acreage allotment for any crop of wheat shall be that acreage which the Secretary determines will, on the basis of the national average yield for wheat, produce an amount thereof adequate, together with the estimated carry-over at the beginning of the marketing year for such crop, to make available a supply for such marketing year equal to a normal year's domestic consumption and exports plus 30 per centum thereof. The national acreage allotment for wheat for 1938 shall be sixty-two million five hundred thousand acres. *The national acreage allotment for wheat for any year shall be not less than fifty-five million acres.*² (7 U. S. C. 1940 ed. 1333, February 16, 1938, 52 Stat. 53.)

Apportionment of National Acreage Allotment

SEC. 334. (a) The national acreage allotment for wheat shall be apportioned by the Secretary among the several States on the basis of the acreage seeded for the production of wheat during the ten calendar years immediately preceding the calendar year in which the national acreage

² All of the italicized words except "any year" were added June 20, 1938, by 52 Stat. 775. The words "any year" were substituted July 26, 1939, by 53 Stat. 1123, in lieu of the figure "1939" (June 20, 1938, 52 Stat. 775).

allotment is determined (plus, in applicable years, the acreage diverted under previous agricultural adjustment and conservation programs), with adjustments for abnormal weather conditions and for trends in acreage during such period. (7 U. S. C. 1940 ed. 1334 (a), February 16, 1938, 52 Stat. 53.)

(b) The State acreage allotment for wheat shall be apportioned by the Secretary among the counties in the State, on the basis of the acreage seeded for the production of wheat during the ten calendar years immediately preceding the calendar year in which the national acreage allotment is determined (plus, in applicable years, the^a acreage diverted under previous agricultural adjustment and conservation programs), with adjustments for abnormal weather conditions and trends in acreage during such period and for the promotion of soil-conservation practices. (7 U. S. C. 1940 ed. 1334 (b), February 16, 1938, 52 Stat. 54).

(c) The allotment to the county shall be apportioned by the Secretary, through the local committees, among the farms within the county on the basis of tillable acres, crop-rotation practices, type of soil, and topography. Not more than 3 per centum of such county allotment shall be apportioned to farms on which wheat has not been planted during any of the three marketing years immediately preceding the marketing year in which the allotment is made. (7 U. S. C. 1940 ed. 1334 (c), February 16, 1938, 52 Stat. 54.)

^a The word "net" formerly appearing at this point was deleted April 7, 1938, by 52 Stat. 203.

Marketing Quotas

[Public, No. 74, 77th Cong.] Notwithstanding the provisions of the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the Act)—

(1) The farm marketing quota under the Act for any crop of wheat shall be the actual production of the acreage planted to wheat on the farm, less the normal production or the actual production, whichever is the smaller, of that acreage planted to wheat on the farm which is in excess of the farm acreage allotment for wheat. The farm marketing quota under the Act for any crop of corn shall be the actual production of the acreage planted to corn on the farm, less the normal production or the actual production, whichever is the smaller, of that acreage planted to corn on the farm which is in excess of the farm acreage allotment for corn.

The normal production, or the actual production, whichever is the smaller, of such excess acreage is hereinafter called the "farm marketing excess" of corn or wheat, as the case may be. For the purposes of this resolution, "actual production" of any number of acres of corn or wheat on a farm means the actual average yield of corn or wheat, as the case may be, for the farm times such number of acres.

(2) During any marketing year for which quotas are in effect, the producer shall be subject to a penalty on the farm marketing excess of corn and wheat. The rate of the penalty shall be 50 per centum of the basic rate of the loan on the commodity for cooperators for such marketing

year under section 302 of the Act and this resolution.

(3) The farm marketing excess for corn and wheat shall be regarded as available for marketing, and the penalty and the storage amount or amounts to be delivered to the Secretary of the commodity shall be computed upon the normal production of the excess acreage. Where, upon the application of the producer for an adjustment of penalty or of storage, it is shown to the satisfaction of the Secretary that the actual production of the excess acreage is less than the normal production thereof, the difference between the amount of the penalty or storage as computed upon the basis of normal production and as computed upon the basis of actual production shall be returned to or allowed the producer. The Secretary shall issue regulations under which the farm marketing excess of the commodity for the farm may be stored or delivered to him. Upon failure to store or deliver to the Secretary the farm marketing excess within such time as may be determined under regulations prescribed by the Secretary, the penalty computed as aforesaid shall be paid by the producer. Any corn or wheat delivered to the Secretary hereunder shall become the property of the United States and shall be disposed of by the Secretary for relief purposes in the United States or in foreign countries or in such other manner as he shall determine will divert it from the normal channels of trade and commerce.

(4) Until the producers on any farm store, deliver to the Secretary, or pay penalty on, the farm

marketing excess of any crop of corn or wheat, the entire crop of corn or wheat, as the case may be, produced on the farm shall be subject to a lien in favor of the United States for the amount of the penalty.

(5) The penalty upon corn or wheat stored shall be paid by the producer at the time, and to the extent, of any depletion in the amount of the commodity so stored, except depletion resulting from some cause beyond the control of the producer.

(6) Whenever the planted acreage of the then current crop of corn or wheat on any farm is less than the farm acreage allotment for such commodity, the total amount of the commodity from any previous crops required to be stored in order to postpone or avoid payment of penalty shall be reduced by that amount which is equal to the normal production of the number of acres by which the farm acreage allotment exceeds the planted acreage. The provisions of section 326 (b) and (c) of the Act shall be applicable also to wheat.

(7) A farm marketing quota on corn or wheat shall not be applicable to any farm on which the acreage planted to the commodity is not in excess of fifteen acres. The marketing penalty on corn or wheat shall not be applicable to any farm which, under the terms of the then current agricultural conservation program formulated under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, is classified as a non-allotment farm if the acreage of the commodity harvested on such nonallotment farm is not in excess of fifteen acres or the acreage allotment for

the farm, whichever is larger. If the acreage of the commodity harvested on any such nonallotment farm is in excess of fifteen acres and in excess of such acreage allotment, the normal production or the actual production, whichever is the smaller, of the acreage harvested in excess of fifteen acres or such acreage allotment, whichever is larger, shall be taken as the farm marketing excess and shall be subject to penalty: *Provided*, That there shall be no penalty on wheat harvested on any such nonallotment farm from which no wheat is sold if the acreage of wheat harvested on such farm does not exceed such acreage per family living thereon as may be used for home consumption without reducing the payment with respect to the farm under the then current agricultural conservation program: *Provided further*, That for the marketing year beginning in 1941, there shall be no marketing penalty on wheat with respect to any such nonallotment farm if the acreage of wheat harvested on the farm is not in excess of the usual acreage determined for the farm under the 1941 agricultural conservation program and the county committee determines, in accordance with regulations of the Secretary, that there will not be marketed an amount of wheat in excess of the 1941 farm marketing quota.

(8) Until the farm marketing excess of corn or wheat, as the case may be, is stored or delivered to the Secretary or the penalty thereon is paid, each bushel of the commodity produced on the farm which is sold by the producer to any person within the United States shall be subject to the penalty as specified in paragraph (2) of this reso-

lution. Such penalty shall be paid by the buyer, who may deduct an amount equivalent to the penalty from the price paid to the producer.

(9) The marketing penalty for cotton and rice produced in the calendar year in which any marketing year begins (if beginning with or after the 1941-42 marketing year) shall be at a rate equal to 50 per centum of the basic rate of the loan for cooperators for such marketing year under section 302 of the Act and this resolution.

(10) The Commodity Credit Corporation is directed to make available upon the 1941, 1942, 1943, 1944, 1945 and 1946 crops of the commodities cotton, corn, wheat, rice, tobacco and peanuts⁴ for which producers have not disapproved marketing quotas for the marketing year beginning in the calendar year in which such crop is harvested,⁵ loans as follows:

(a) To cooperators (except cooperators outside the commercial corn-producing area, in the case of corn) at the rate of 85 per centum of the parity price for the commodity as of the beginning of the marketing year;

(b) To cooperators outside the commercial corn-producing area, in the case of corn, at the rate of 75 per centum of the rate specified in (a) above;

(c) To noncooperators (except noncooperators outside the commercial corn-

⁴ Italicized matter substituted December 26, 1941, by — Stat. —, in lieu of the following: "1941 crop of the commodities cotton, corn, wheat, rice, or tobacco".

⁵ Italicized matter substituted December 26, 1941, by — Stat. —, in lieu of the following: "for the marketing year beginning in 1941".

producing area, in the case of corn) at the rate of 60 per centum of the rate specified in (a) above and only on so much of the commodity as would be subject to penalty if marketed.

(11) The provisions of this resolution are amendatory of and supplementary to the Act, and all provisions of law applicable in respect of marketing quotas and loans under such Act as so amended and supplemented shall be applicable, but nothing in this resolution shall be construed to amend or repeal section 301 (b) (6), 323 (b), or 335 (d) of the Act.

(12) Notwithstanding any of the foregoing provisions, the farm marketing excess for any crop of wheat for any farm shall not be larger than the amount by which the actual production of such crop of wheat on the farm exceeds the normal production of the farm wheat-acreage allotment, if the producer establishes such actual production to the satisfaction of the Secretary. Where a downward adjustment in the amount of the farm marketing excess is made pursuant to the provisions of this paragraph, the difference between the amount of the penalty or storage as computed upon the farm marketing excess before such adjustment and as computed upon the adjusted farm marketing excess shall be returned to or allowed the producer. (May 26, 1941, 55 Stat. 203.)*

SEC. 335. (a) Whenever it shall appear that the total supply of wheat as of the beginning of any marketing year will exceed a normal year's do-

* Italicized paragraph (12) added December 26, 1941, by — Stat. —, effective as of May 26, 1941.

mestic consumption and exports by more than 35 per centum, the Secretary shall, not later than the May 15 prior to the beginning of such marketing year, proclaim such fact and, during the marketing year beginning July 1 and continuing throughout such marketing year, a national marketing quota shall be in effect with respect to the marketing of wheat. The Secretary shall ascertain and specify in the proclamation the amount of the national marketing quota in terms of a total quantity of wheat and also in terms of a marketing percentage of the national acreage allotment for the current crop which he determines will, on the basis of the national average yield of wheat, produce the amount of the national marketing quota. Marketing quotas for any marketing year shall be in effect with respect to wheat harvested in the calendar year in which such marketing year begins notwithstanding that the wheat is marketed prior to the beginning of such marketing year. No marketing quota with respect to the marketing of wheat shall be in effect for the marketing year beginning July 1, 1938, unless prior to the date of the proclamation of the Secretary, provision has been made by law for the payment, in whole or in part, in 1938 of parity payments with respect to wheat. (7 U. S. C. 1940 ed. 1335 (a), February 16, 1938, 52 Stat. 54.)

(b) The amount of the national marketing quota for wheat shall be equal to a normal year's domestic consumption and exports plus 30 per centum thereof, less the sum of (1) the estimated carry-over of wheat as of the beginning of the marketing year with respect to which the quota

is proclaimed and (2) the estimated amount of wheat which will be used on farms as seed or live-stock feed during the marketing year. (7 U. S. C. 1940 ed. 1335 (b), February 16, 1938, 52 Stat. 54.)

(c) The farm marketing quota for any farm for any marketing year shall be a number of bushels of wheat equal to the sum of—

(1) A number of bushels equal to the normal production or the actual production, whichever is the greater, of the farm acreage allotment; and

(2) A number of bushels equal to the amount, or part thereof, of wheat from any previous crop which the farmer has on hand which had such amount, or part thereof, been marketed during the preceding marketing year in addition to the wheat actually marketed during such preceding marketing year, could have been marketed without penalty.

Italicized subsection (c) substituted July 26, 1939, by 53 Stat. 1126, in lieu of the following: "(c) The farm marketing quota for any farm for any marketing year shall be a number of bushels of wheat equal to the sum of—

"(1) A number of bushels equal to the normal production of a number of acres determined by applying the marketing percentage specified in the quota proclamation to the farm acreage allotment for the current crop; and

"(2) A number of bushels of wheat equal to the amount, or part thereof, of wheat from any previous crop which the farmer has on hand which, had such amount, or part thereof, been marketed during the preceding marketing year in addition to the wheat actually marketed during such preceding marketing year, could have been marketed without penalty.

"In no event shall the farm marketing quota for any farm be less than the normal production of half the farm acreage allotment for the farm." (February 16, 1938, 52 Stat. 54.)

(3) *Any farmer who does not market wheat in excess of the normal production or the actual production, whichever is the greater, of the farm acreage allotment shall not be subject to penalty under the provisions of section 339. Any farmer who stores, in accordance with regulations issued by the Secretary, an amount of wheat which is less than the amount subject to penalty, shall be presumed to have marketed the amount of such wheat subject to penalty which is not so stored.* (7 U. S. C. 1940 ed. 1335 (c).)

(d) No farm marketing quota with respect to wheat shall be applicable in any marketing year to any farm on which the normal production of the acreage planted to wheat of the current crop is less than *two hundred** bushels. (7 U. S. C. 1940 ed. 1335 (d). February 16, 1938, 52 Stat. 55.)

Referendum

SEC. 336. Between the date of the issuance of any proclamation of any national marketing quota for wheat and June 10, the Secretary shall conduct a referendum, by secret ballot, of farmers who will be subject to the quota specified therein to determine whether such farmers favor or oppose such quota. If more than one-third of the farmers voting in the referendum oppose such quota, the Secretary shall, prior to the effective date of such quota, by proclamation suspend the operation of the national marketing quotas with

*The italicized words "two hundred" were substituted June 6, 1940, by 54 Stat. 232, in lieu of the words "one hundred".

respect to wheat. (7 U. S. C. 1940 ed. 1336, February 16, 1938, 52 Stat. 55.)

Adjustment and Suspension of Quotas

SEC. 337. (a) If the total supply as proclaimed by the Secretary within forty-five days after the beginning of the marketing year is less than that specified in the proclamation by the Secretary under section 335 (a), then the national marketing quota specified in the proclamation under such section shall be increased accordingly. (7 U. S. C. 1940 ed. 1337 (a), February 16, 1938, 52 Stat. 55.)

(b) Whenever it shall appear from either the July or the August production estimates, officially published by the Division of Crop and Livestock Estimates of the Bureau of Agricultural Economics of the Department, that the total supply of wheat as of the beginning of the marketing year was less than a normal year's domestic consumption and exports plus 30 per centum thereof, the Secretary shall proclaim such fact prior to July 20, or August 20, as the case may be, if farm marketing quotas have been announced with respect to the crop grown in such calendar year. Thereupon such quotas shall become ineffective. (7 U. S. C. 1940 ed. 1337 (b), February 16, 1938, 52 Stat. 55.)

Transfer of Quotas

SEC. 338. Farm marketing quotas for wheat shall not be transferable, but, in accordance with regulations prescribed by the Secretary for such purpose, any farm marketing quota in excess of

the supply of wheat for such farm for any marketing year may be allocated to other farms on which the acreage allotment has not been exceeded. (7 U. S. C. 1940 ed. 1338, February 16, 1938, 52 Stat. 55.)

Penalties

SEC. 339. Any farmer who, while farm marketing quotas are in effect, markets wheat in excess of the farm marketing quota for the farm on which such wheat was produced, shall be subject to a penalty of 15 cents per bushel of the excess so marketed. (7 U. S. C. 1940 ed. 1339, February 16, 1938, 52 Stat. 55.)

SUBTITLE C—ADMINISTRATIVE PROVISIONS

PART I—PUBLICATION AND REVIEW OF QUOTAS

Application of Part

SEC. 361. This Part shall apply to the publication and review of farm marketing quotas established for tobacco, corn, wheat, cotton, "peanuts," and rice, established under subtitle B. (7 U. S. C. 1940, ed. 1361, February 16, 1938, 52 Stat. 62.)

Publication and Notice of Quota

SEC. 362. All acreage allotments, and the farm marketing quotas established for farms in a county or other local administrative area shall, in accordance with regulations of the Secretary, be made and kept freely available for public inspection in such county or other local administrative area.

* Matter from * to * added April 3, 1941, by 55 Stat. 88.

An additional copy of this information shall be kept available in the office of the county agricultural extension agent or with the chairman of the local committee. Notice of the farm marketing quota of his farm shall be mailed to the farmer. (7 U. S. C. 1940 ed. 1362, February 16, 1938, 52 Stat. 62.)

Review by Review Committee

SEC. 363. Any farmer who is dissatisfied with his farm marketing quota may, within fifteen days after mailing to him of notice as provided in section 362, have such quota reviewed by a local review committee composed of three farmers appointed by the Secretary. Such committee shall not include any member of the local committee which determined the farm acreage allotment, the normal yield, or the farm marketing quota for such farm. Unless application for review is made within such period, the original determination of the farm marketing quota shall be final. (7 U. S. C. 1940 ed. 1363, February 16, 1938, 52 Stat. 63.)

Review Committee

SEC. 364. The members of the review committee shall receive as compensation for their services the same per diem as that received by members of the committee utilized for the purposes of the Soil Conservation and Domestic Allotment Act, as amended. The members of the review committee shall not be entitled to receive compensation for more than thirty days in any one year. (7 U. S. C. 1940 ed. 1364, February 16, 1938, 52 Stat. 63.)

Institution of Proceedings

SEC. 365. If the farmer is dissatisfied with the determination of the review committee, he may, within fifteen days after a notice of such determination is mailed to him by registered mail, file a bill in equity against the review committee as defendant, in the United States district court, or institute proceedings for review in any court of record of the State having general jurisdiction, sitting in the county or the district in which his farm is located, for the purpose of obtaining a review of such determination. Bond shall be given in an amount and with surety satisfactory to the court to secure the United States for the costs of the proceeding. The bill of complaint in such proceeding may be served by delivering a copy thereof to any one of the members of the review committee. Thereupon the review committee shall certify and file in the court a transcript of the record upon which the determination complained of was made, together with its findings of fact. (7 U. S. C. 1940 ed. 1365, February 16, 1938, 52 Stat. 63.)

Court Review

SEC. 366. The review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for fail-

ure to adduce such evidence in the hearing before the review committee, the court may direct such additional evidence to be taken before the review committee in such manner and upon such terms and conditions as to the court may seem proper. The review committee may modify its findings of fact or its determination by reason of the additional evidence so taken, and it shall file with the court such modified findings or determination, which findings of fact shall be conclusive. At the earliest convenient time, the court, in term time or vacation, shall hear and determine the case upon the original record of the hearing before the review committee, and upon such record as supplemented if supplemented, by further hearing before the review committee pursuant to direction of the court. The court shall affirm the review committee's determination, or modified determination, if the court determines that the same is in accordance with law. If the court determines that such determination or modified determination is not in accordance with law, the court shall remand the proceeding to the review committee with direction either to make such determination as the court shall determine to be in accordance with law or to take such further proceedings as, in the court's opinion, the law requires. (7 U. S. C. 1940 ed. 1366, February 16, 1928, 52 Stat. 63.)

Stay of Proceedings and Exclusive Jurisdiction.

SEC. 367. The commencement of judicial proceedings under this Part shall not, unless specifically ordered by the court, operate as a stay of the

review committee's determination. Notwithstanding any other provision of law, the jurisdiction conferred by this Part to review the legal validity of a determination made by a review committee pursuant to this Part shall be exclusive. No court of the United States or of any State shall have jurisdiction to pass upon the legal validity of any such determination except in a proceeding under this Part. (7 U. S. C. 1940 ed. 1367, February 16, 1938, 52 Stat. 64.)

No Effect on Any Other Quotas

SEC. 368. Notwithstanding any increase of any farm marketing quota for any farm as a result of review of the determination thereof under this Part, the marketing quotas for other farms shall not be affected. (7 U. S. C. 1940 ed. 1368, February 16, 1938, 52 Stat. 64.)

PART II—ADJUSTMENT OF QUOTAS AND ENFORCEMENT

* * * * *

Payment and Collections of Penalties

SEC. 372. (a) The penalty with respect to the marketing, by sale, of wheat, cotton, or rice, if the sale is to any person within the United States, shall be collected by the buyer. (7 U. S. C. 1940 ed. 1372 (a), February 16, 1938, 52 Stat. 65.)

(b) All penalties provided for in Subtitle B shall be collected and paid in such manner, at such times, and under such conditions as the Secretary may by regulations prescribe. Such penalties shall be remitted to the Secretary by the person liable for the penalty, except that if any other

person is liable for the collection of the penalty, such other person shall remit the penalty. The amount of such penalties shall be covered into the general fund of the Treasury of the United States. (7 U. S. C. 1940 ed. 1372 (b), February 16, 1938, 52 Stat. 65.)

(c)¹⁰ *Whenever, pursuant to a claim filed with the Secretary "within two years" after payment to him of any penalty collected from any person pursuant to this Act,¹¹ the Secretary finds that such penalty was erroneously, illegally, or wrongfully collected¹² and the claimant bore the burden of the payment of such penalty,¹³ the Secretary shall certify to the Secretary of the Treasury for payment to the claimant, in accordance with regulations prescribed by the Secretary of the Treasury, such amount as the Secretary finds the claimant is entitled to receive as a refund of such penalty.¹²*

Notwithstanding any other provision of law, the Secretary is authorized to prescribe by regulations for the identification of farms and it shall be sufficient to schedule receipts into special deposit accounts or to schedule such receipts for transfer therefrom, or directly, into the separate fund provided for in subsection (b) hereof by means of such identification without reference to the names of the producers on such farms.^c

¹⁰ Italicized subsection (c) added April 7, 1938, by 52 Stat. 204.

¹¹ Matter from ^a to ^a substituted July 2, 1940, by 54 Stat. 728, in lieu of the following: "within one year".

¹² Matter from ^b to ^b and matter from ^c to ^c added July 2, 1940, by 54 Stat. 728.

The Secretary is authorized to prescribe regulations governing the filing of such claims and the determination of such refunds. (7 U. S. C. 1940 ed. 1372 (c).)

(d) No penalty shall be collected under this Act with respect to the marketing of any agricultural commodity grown for experimental purposes only by any publicly owned agricultural experiment station.¹⁵ (7 U. S. C. 1940 ed. 1372 (d).)

SUBTITLE D—MISCELLANEOUS PROVISIONS AND APPROPRIATIONS

PART I—MISCELLANEOUS

Utilization of Local Agencies

SEC. 388. (a) The provisions of section 8 (b) and section 11 of the Soil Conservation and Domestic Allotment Act, as amended, relating to the utilization of State, county, local committees, the extension service, and other approved agencies, and to recognition and encouragement of cooperative associations, shall apply in the administration of this Act; and the Secretary shall, for such purposes, utilize the same local, county, and State committees as are utilized under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended. The local administrative areas designated under section 8 (b) of the Soil Conservation and Domestic Allotment Act, as amended, for the administration of programs under that Act, and the local administrative areas

¹⁵ Italicized subsection (d) added April 7, 1939, by 52 Stat. 204.

designated for the administration of this Act shall be the same. (7 U. S. C. 1940 ed. 1388 (a), February 16, 1938, 52 Stat. 68.)

* * * *

Separability

SEC. 390. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances, and the provisions of the Soil Conservation and Domestic Allotment Act, as amended, shall not be affected thereby. Without limiting the generality of the foregoing, if any provision of this Act should be held not to be within the power of the Congress to regulate interstate and foreign commerce, such provision shall not be held invalid if it is within the power of the Congress to provide for the general welfare or any other power of the Congress. If any provision of this Act for marketing quotas with respect to any commodity should be held invalid, no provision of this Act for marketing quotas with respect to any other commodity shall be affected thereby. If the application of any provision for a referendum should be held invalid, the application of other provisions shall not be affected thereby. If by reason of any provision for a referendum the application of any such other provision to any person or circumstance is held invalid, the application of such other provision to other persons or circumstances shall not be affected thereby. (7 U. S. C. 1940 ed. 1390, February 16, 1938, 52 Stat. 69.)

**In the District Court of the United States
for the Southern District of Ohio, West-
ern Division
(At Dayton)**

CIVIL No. 118

**ROSCOE C. FILBURN, R. R. #10, DAYTON, OHIO,
PLAINTIFF**

v.

**CARL R. HELKE, R. R. #1, VANDALIA, OHIO,
ROY M. BAKER, R. R. #1, SPRING VALLEY, OHIO,
AND
HOMER W. FLINSBACH, R. R. #1, GERMANTOWN,
OHIO,**

**INDIVIDUALLY AND AS MEMBERS OF THE COUNTY
COMMITTEE IN AND FOR MONTGOMERY COUNTY,
OHIO, UNDER THE AGRICULTURAL ADJUSTMENT
ACT OF 1938, AS AMENDED,**

**DALE WILLIAMS, HOLLANSBURG, DARKE COUNTY,
OHIO, INDIVIDUALLY AND AS STATE CHAIRMAN
FOR THE STATE OF OHIO UNDER THE AGRICUL-
TURAL ADJUSTMENT ACT OF 1938, AS AMENDED,
AND**

**CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE OF
THE UNITED STATES OF AMERICA, 2101 NEW
HAMPSHIRE AVENUE, WASHINGTON, D. C.,
DEFENDANTS**

**Before ALLEN, *Circuit Judge*, and NEVIN and
DRUFFEL, *District Judges***

DRUFFEL, District Judge: The above entitled action was submitted to this three judge court organized under Section 3 of the Act of August 24, 1937, after argument, upon the pleadings and agreed stipulation of facts from which it appears that plaintiff is a farmer who has been engaged in producing wheat among other products on a farm in Montgomery County, Ohio. Under the provisions of the Agricultural Adjustment Act of 1938 as amended, a wheat acreage allotment of 11.1 acres and a normal yield of 20.1 bushels an acre were established for plaintiff's farm in July 1940, for the 1941 wheat crop.

In the fall of 1940 plaintiff planted 23 acres of wheat which produced in July 1941, 462 bushels, which amounted to 239 bushels farm marketing excess over the fixed allotment. At the time of planting the acreage in excess of the allotment, Section 339 of the Act provided:

Any farmer who, while farm marketing quotas are in effect, markets wheat in excess of the farm marketing quota for the farm on which such wheat was produced, shall be subject to a penalty of 15 cents per bushel of the excess so marketed.

In due time, the defendant Claude R. Wickard, Secretary of Agriculture, pursuant to the Act, issued a proclamation relating to the national marketing quota, at the same time calling for a national referendum on May 31, 1941, of wheat farmers planting more than fifteen acres of wheat (fifteen acres or less are exempt from the Act) to approve or disapprove of the quota allotment, etc., and also issued instructions as to the referendum.

On May 19, 1941, Mr. Wickard, made a radio address to the farmers of the United States, in which he strongly urged an affirmative vote of more than the necessary two-thirds of eligible wheat farmers in the national referendum, saying among other things:

* * * To make wise decisions, we need to know the facts. What then, in view of the vote on May 31, are some of the facts about wheat? For one thing, we have a record amount of old wheat on hand and a bumper crop in prospect. That is something to be looked at with satisfaction on one hand and with alarm on the other. * * *

Because of the uncertain world situation, we deliberately planted several million extra acres of wheat this year. * * * Farmers should not be penalized because they have provided insurance against shortages of food. The nation wants farmers safeguarded against unfair penalties. The nation also wants other protection given agriculture.

* * * As you all know, parity is one of the most important objectives of the national farm programs and will continue to be a goal. * * *

Only last week, the Senate and House sent to the White House a bill calling for an 85 percent of parity loan for wheat. * * *

But no wheat loan will be made unless wheat farmers vote for marketing quotas and without the loan there is no hope for parity on wheat in 1941. So parity for wheat is up to the wheat farmers themselves. * * *

The law provides that wheat loans will not be made if wheat growers vote down

marketing quotas. * * * The continuance—or discontinuance—of government loans on wheat is at stake in this referendum on May 31. To put it bluntly, no quotas, no loans. And, judging from prices in Canada, rejection of marketing quotas on May 31 would just about cut the price of wheat in this country in half. * * *

I wish that corn and wheat farmers were able to vote on marketing quotas before they plant their crops, instead of afterwards as is the case now. Cotton, tobacco and rice farmers vote on quotas before they plant and I see no good reason for denying this privilege to wheat and corn growers. I am sorry that the legislation authorizing loans at 85 percent of parity did not change the time for voting on wheat and corn quotas. This provision was recommended by the Department of Agriculture and we plan to recommend it to Congress again. Yet the fact that the referendum on wheat quotas comes after the crop is almost ready for harvest in no way alters the significance of the vote. * * *

In the national referendum 84% voted in favor of the marketing quotas and 19% were opposed to the quotas.

On May 26, 1941, the bill referred to by Mr. Wickard, relating to wheat marketing quotas under the Act of 1938, as amended, was approved. The Act as thus amended provided for an increase in loans on wheat equal to 85% of the parity price of wheat. It also provided during any marketing year the quotas are in effect, the producer shall be subject to a penalty on the farm marketing excess at the rate of one-half of the basic rate

of the loan on the commodity, and that the entire crop of wheat produced on the farm shall be subject to a lien in favor of the United States for the amount of the penalty.

Plaintiff for his cause of action complains that the excess of 239 bushels of wheat has been subjected to a penalty of 49 cents per bushel by the defendant county committee; that his entire crop of wheat is subject to a lien for the payment thereof, and unless paid he would be refused a marketing card, which is necessary for plaintiff to sell his crop of wheat.

By reason thereof plaintiff challenges the authority of the Secretary of Agriculture to construe said Act, as amended, retroactively as to the crop of wheat planted in the fall of 1940, and asserts that the referendum is invalid and the Act and amendments thereto are violative of Sections 4 and 9 of Article I of the Constitution and of the Fifth and Tenth Amendments thereto.

In the recent case of *Mulford et al. v. Smith et al.*, 307 U. S. 38, the Supreme Court considered questions relating to the claimed retroactive operation of the Tobacco Act, and upheld the Act.

Upon analysis we believe the case at bar is clearly distinguishable from *Mulford et al. v. Smith et al.*, aside from the difference in controlling provisions of the Wheat and Tobacco Acts, and should be placed in an entirely different category because of the circumstances surrounding the referendum and the fact that the law increasing the penalty was approved only five days prior to the national referendum held in forty wheat growing states.

Considering the fact that the law increasing the penalty to one-half of the 85% parity loan and subjecting the entire wheat crop to a lien for the payment thereof became effective May 26, 1941, yet would be inoperative if more than one-third of the eligible wheat farmers opposed the quota in the May 31st referendum, it becomes important to determine whether or not the necessary two-thirds of the wheat farmers voluntarily voted affirmatively or were unintentionally misled in so voting in the referendum.

It is fully recognized by all that Congress has devoted much time in the past several years in a laudable effort to help the farmers, and as Mr. Wickard said: "parity is one of the most important objectives of the national farm programs and will continue to be a goal," and it is but natural that the several hundred thousands of wheat farmers, scattered all over the United States (559,630 voted), should look to the Secretary of Agriculture for advice and direction in a matter of such importance as the quota referendum, and when in his official capacity, the Secretary, in the nation-wide radio speech appealing for an affirmative vote for the quota, eleven days prior to the referendum, said:

* * * To make wise decisions, we need to know the facts.

* * * Because of the uncertain world situation, we deliberately planted several million extra acres of wheat. * * * Farmers should not be penalized because they have provided insurance against shortages of food.

it would seem that the Secretary meant what he said and that the farmers voting affirmatively would not be penalized for the "deliberately planted" excess acreage beyond the law in effect at the time of planting. But the contrary was true, the bill to which Mr. Wickard referred greatly increased the penalty for the "deliberately planted" excess acreage and subjected the entire crop to a lien for the payment of the penalty.

Giving full credit to the Secretary for his zeal and his efforts to help the farmer to avoid ruinous wheat prices which he foresaw if the quota referendum failed, yet it would seem that the equities of the situation demanded that the Secretary also forewarn the farmers that in accepting the benefits of increased parity loans they were also subjecting themselves to increased penalties for the farm marketing excess.

In the *Mulford et al. v. Smith et al. case*, 307 U. S. 38, 46 and 47, the court say:

In the light of the fact that the appellants received notice of their quotas only a few days before the actual marketing season opened, the maintenance of actions based upon collection of the penalties would have been a practical impossibility. We are of opinion, therefore, that a case is stated for the interposition of a court of equity.

Here but five days intervened between the time the law became effective and the favorable referendum which made it operable.

We have no precedent in point to guide us in a determination of the precise issues raised by the

foregoing state of facts. However, in cases involving the validity of gift taxes, a principle was approved which we think applicable here. The Supreme Court in *Nichols v. Coolidge*, 274 U. S. 531, 542, say:

This court has recognized that a statute purporting to tax may be so arbitrary and capricious as to amount to confiscation and offend the Fifth Amendment.

and in *Welch v. Henry*, 305 U. S. 134, 147, say:

In the cases in which this court has held invalid the taxation of gifts made and completely vested before the enactment of the taxing statute, decision was rested on the ground that the nature or amount of the tax could not reasonably have been anticipated by the taxpayer at the time of the particular voluntary act which the statute later made the taxable event. (The voluntary act in the case at bar being the affirmative vote in the referendum.)

Under the circumstances we are obliged to hold that the amendment of May 26, 1941, in so far as it increased the penalty for the farm marketing excess over the fifteen cents per bushel prevailing at the time of planting and subjected the entire crop to a lien for the payment thereof, operated retroactively and that it amounts to a taking of plaintiff's property without due process, and also, or in the alternative that the equities of the case as shown by the record favor the plaintiff.

In consideration whereof the court grants plaintiff's prayer to the extent that defendants be perpetually enjoined from collecting the penalty for the farm marketing excess over and above

fifteen cents per bushel and from subjecting the entire crop to a lien for the payment thereof and from collecting said fifteen cents per bushel except in accordance with the provisions of Section 339 of the Agricultural Adjustment Act of 1938 as it was in effect prior to May 26, 1941.

In view of the foregoing we deem it unnecessary to pass on the other questions raised by plaintiff's bill of complaint. *Brucker v. Fisher*, 49 F. (2d) 759-761 (C. C. A. 6); *Piedmont & N. Ry. Co. v. Query*, 56 F. (2d) 172-175.

NEVIN, *District Judge*, concurs.

(Signed) DRUFFEL—J.
NEVIN—J.

ALLEN, *Circuit Judge*, dissenting: I cannot agree with the conclusions of my colleagues. There is no equitable justification for interference by this court with the fulfillment of the declared legislative will of the nation because of the circumstances under which a marketing excess of wheat was established for plaintiff's farm.

The question of the legal effect of alleged infirmities in the referendum on quota provisions for the 1941 crop of wheat is substantially identical in every material respect with that considered by the Supreme Court in *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533. That case held that an order issued by the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act was valid and enforceable. The order fixed minimum prices to be paid producers for milk sold to dealers and disposed of by them in a designated market area comprising

the city of New York and adjacent counties. Just as here, a favorable referendum of farmers was made a condition upon the operation and effectiveness of wheat marketing quotas, so in that case the Marketing Agreement Act required that an order fixing prices to the producers should be made only on condition that such provision was "approved or favored" by a specific proportion of the producers of the milk covered in such order. Title 7, U. S. C., § 608c (9) (B). There a pamphlet issued by the Department of Agriculture prior to the referendum and publications of private organizations to the effect that dealers would be required to pay all producers the uniform price established, whereas the order made it clear that the uniform price was not applicable to milk sold outside the market area or to milk handled by co-operatives. The Supreme Court held that the validity of the referendum had not been affected.

Here the alleged misrepresentation claimed to have vitiated the submission of the wheat quota referendum is extracted from a radio speech of the Secretary of Agriculture made some twelve days before the referendum. He said that "farmers should not be penalized because they have provided insurance against shortages of food." The plaintiff claims this language is misleading because of the provision in the amendment to the Act which increased the penalty on the farm marketing excess from 15 to 49 cents per bushel. The context of the Secretary's speech makes it clear that he was speaking of penalties in the form of ruinously low prices which result from an excess supply of any basic farm commodity. No

reference to enforcement provisions of any legislation, new or old, could reasonably be understood to be intended from the reference to low prices as penalties, for the Secretary went on to say:

The nation also wants other protection given agriculture. One expression of this wish is the national farm programs. These programs protect all farmers. Since the second world war began, commodity loans have stood between wheat producers and the economic blitzkrieg.

Without the programs, wheat prices would be threatening the low record of 1932 instead of being within striking distance of parity as they are now.

Other statements significant of the intended emphasis are as follows:

Average prices of wheat to Kansas growers in mid-May were about 80 cents. This compares with about 45 cents to Canadian farmers (United States money). Leaving out government payments, American producers will receive over twice as much for this year's wheat as Canadian growers.

High prices without adjustment of supply are certain to be followed by ruinously low prices. We know that from experience.

It is not claimed that the speech was intended to mislead producers, and considered as a whole, it would not have a natural tendency to mislead. As in *United States v. Rock Royal Co-operative, Inc., supra*, "there is no evidence that any producer misunderstood." The Secretary declared as a fact and it is not denied that the requisite

proportion of the participants voted in favor of the institution of quotas. In the language of the Supreme Court; "There is no authority in the courts to go behind this conclusion of the Secretary to inquire into the influences which caused the producers to favor" the proposed action. *United States v. Rock Royal Co-operative, Inc., supra.*

While the plaintiff presents a case of possible hardship, I do not think that the penalty provisions operate so retroactively or so arbitrarily as to violate the Fifth Amendment.

In *Mulford v. Smith*, 307 U. S. 38, the crop of tobacco, which was subjected to a penalty insofar as it exceeded certain quotas and was marketed, had been planted in seed beds before the Act was passed, had matured and was ready for marketing before producers received notice of the quota allotted to their respective farms. In that case it was claimed that since the producers complaining were unable to process their tobacco and make it fit to be held for sale in a later year, the penalty amounted to a tax upon production and was so oppressive as to be invalid. The Supreme Court held that the fact that certain producers had not provided facilities for processing and storing the excess tobacco was of no legal significance.

The distinctions which the plaintiff advances do not distinguish the *Mulford* case. The plaintiff complains that his entire crop of wheat is now subject to a lien in favor of the United States for the amount of the penalty. The assertion is made that "Wheat farmers, under the provisions of the Act as amended on May 26, 1941, are denied

the privilege of storing their wheat, any part of it, without paying the penalty of 49 cents a bushel on all of the excess production." This statement is misleading. It is true only if storing is given the meaning of "storing without compliance with the Act," for the resolution adopted May 26, 1941 (Public Law 74-77th Congress) expressly provides (paragraph 4):

Until the producers on any farm store, deliver to the Secretary, or pay the penalty on, the farm marketing excess of any crop of corn or wheat, the entire crop of corn or wheat, as the case may be, produced on the farm shall be subject to a lien in favor of the United States for the amount of the penalty. [*Italics added.*]

This clearly means that the lien and the penalty may be avoided by storage of the excess. This conclusion is reenforced by paragraph 6 of the same amendment, which reads:

Whenever the planted acreage of the then current crop of corn or wheat on any farm is less than the farm acreage allotment for such commodity, the total amount of the commodity from any previous crops required to be stored in order to postpone or avoid payment of penalty shall be reduced by that amount which is equal to the normal production of the number of acres by which the farm acreage allotment exceeds the planted acreage. The provisions of section 326 (b) and (c) of the Act shall be applicable also to wheat.

Penalties, therefore, may be avoided by planting acreage below the allotment for a later year or by yields in a subsequent year which are below normal either for the particular farm or for the nation as a whole. Title 7, U. S. C., Section 1326 (b) and (c).

The Act does not purport to control production, but only sale or use. It had been passed some two and a half years before the plaintiff's crop was planted, and it is stipulated that plaintiff had notice of his farm acreage allotment in July, 1940, before the planting of his 1941 crop of wheat. An exaction is not necessarily unconstitutional because retroactive. *Milliken v. United States*, 283 U. S. 15, 21. "In each case, it is necessary to consider the nature of the tax and the circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limitation." *Welch v. Henry*, 305 U. S. 134, 147. It is not so harsh or oppressive here. While the monetary value of plaintiff's wheat crop has been so increased by the stimulating affect of the Act upon wheat prices that increased price more than compensates for any penalty that plaintiff may be required to pay, it is even more significant that plaintiff had been warned by the fact that Congress had undertaken to regulate the supply of wheat available for market by the imposition of penalties. *Milliken v. United States*, *supra*. The Act had been amended in material respects before plaintiff planted his wheat in the fall of 1940, and he could reasonably anticipate that Congress would make further amendments if they

were deemed advisable. One amendment previously made showed that Congress intended to make whatever changes were appropriate to avoid circumvention of the basic purposes of the Act, for it had expanded the meaning of "market" so as to include in the case of wheat, feeding to poultry or livestock. 54 Stat. 727, Sec. 3, approved July 2, 1940.

Congress may impose penalties in aid of the exercise of any of its granted powers. *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381, 393. The authority of the Federal Government over interstate commerce does not differ in extent or character from that retained by the states over matters within their jurisdiction. *United States v. Rock Royal Co-operative, Inc.*, *supra*, at 569, 570. If the commerce clause is a sufficient source of power, controls adopted in its exercise are unconstitutional "only if arbitrary, discriminating or demonstrably irrelevant to the policy the legislature is free to adopt and hence an unnecessary and unwarranted interference with individual liberty." *Nebbia v. New York*, 291 U. S. 502, 539. Here the classification of wheat subject to penalty and wheat free from penalty is an "integral and essential feature" of the Act. Adequate administrative procedure with court review has been provided to insure fair allocation of quotas. Cf. *R. R. Commission of Texas v. Rowan & Nichols Oil Co.*, 310 U. S. 573, 311 U. S. 614; *ibid.*, 311 U. S. 570. Discrimination between cooperating and non-cooperating producers is a constitutional means of securing compliance. " * * * the Fifth Amendment, unlike the Fourteenth, has no equal protection clause."

Sunshine Anthracite Coal Co. v. Adkins, supra, at 401.

The Act as applied to wheat is a valid exercise of the federal commerce power. The tobacco marketing quota provisions have been so upheld. *Mulford v. Smith, supra*. A like decision has been reached as to the provisions relating to cotton. *Troppy v. LaSara Farmers Gin Co., Inc.*, 113 Fed. (2d) 350 (C. C. A. 5). Denial of the same validity to wheat regulation, as a regulation of interstate and foreign commerce, as has been accorded to the tobacco and cotton regulations of the Act, would result in an incongruous exercise of the federal commerce power.

It is no longer open to question that Congress has the power to protect interstate commerce "from interference or injury due to activities which are wholly intrastate." *National Labor Relations Board v. Fainblatt*, 306 U. S. 601. "Activities conducted within state lines do not by this fact alone escape the sweep of the Commerce Clause. Interstate commerce may be dependent upon them." *United States v. Rock Royal Co-operative, Inc., supra*, at 569.

It is true that Congress has no power to regulate intrastate transactions which affect commerce only indirectly. *A. L. A. Schecter Poultry Corp. v. United States*, 295 U. S. 495. But where it is claimed that the local activity sought to be regulated does not directly affect commerce, decision should not be made by examination of the effect of isolated individual activity, but must include due regard to the total effect of the attempted regulation. *United States v. Darby*, 312 U. S. 100, 123.

Title 7, U. S. C., Section 1331, reads as follows:

Wheat is a basic source of food for the Nation, is produced throughout the United States by more than a million farmers, is sold on the countrywide market, and, as wheat or flour, flows almost entirely through instrumentalities of interstate and foreign commerce from producers to consumers.

Abnormally excessive and abnormally deficient supplies of wheat on the countrywide market acutely and directly affect, burden, and obstruct interstate and foreign commerce. Abnormally excessive supplies overtax the facilities of interstate and foreign transportation, congest terminal markets and milling centers in the flow of wheat from producers to consumers, depress the price of wheat in interstate and foreign commerce, and otherwise disrupt the orderly marketing of such commodity in such commerce. Abnormally deficient supplies result in an inadequate flow of wheat and its products in interstate and foreign commerce with consequent injurious effects to the instrumentalities of such commerce and with excessive increases in the prices of wheat and its products in interstate and foreign commerce.

* * * * *

The conditions affecting the production and marketing of wheat are such that, without Federal assistance, farmers, individually or in cooperation, cannot effectively prevent the recurrence of such surpluses and shortages and the burdens on interstate and foreign commerce resulting therefrom, maintain normal supplies of wheat, or provide for the orderly marketing thereof in interstate and foreign commerce.

* * * The provisions hereof for regulation of marketings by producers of wheat whenever an abnormally excessive supply of such commodity exists are necessary in order to maintain an orderly flow of wheat in interstate and foreign commerce under such conditions.

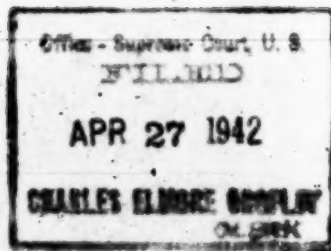
The stipulation of facts now before us amply supports these legislative findings. It follows that the power to regulate the supply of wheat that normally moves in interstate or foreign commerce must be upheld as appropriate means reasonably adapted to the regulation of interstate commerce. Since regulation of the supply of wheat available for sale in interstate commerce but actually used within the state of its origin is drawn into a general plan for the protection of interstate commerce in the commodity from the interferences, burdens and obstructions arising from excessive surplus and the social evils of low values, the power of Congress extends to it as well. *United States v. Rock Royal Co-operative, Inc., supra*, at 569. The regulation of prices there upheld had no more direct or substantial relation to the flow of goods in interstate commerce than does control of supply. The local activities regulated not only affect interstate commerce but also affect the exercise of the granted power of Congress to regulate interstate commerce in sufficient measure so that such regulation is an appropriate and hence permissible means of attaining that legitimate end. See *United States v. Darby, supra*, at 118.

The bill of complaint should be dismissed.

(Signed) ALLEN,
Circuit Judge.



FILE COPY



No. 1080 59.

In the Supreme Court of the United States

OCTOBER TERM, 1941

CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE OF
THE UNITED STATES, ET AL., APPELLANTS

v.

ROSCOE C. FILBURN

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF OHIO

BRIEF FOR THE APPELLANTS



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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1080

**CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE OF
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v.

ROSCOE C. FILBURN

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF OHIO**

BRIEF FOR THE APPELLANTS

OPINION BELOW

The opinion of the District Court (R. 108) is not yet reported.

JURISDICTION

The final judgment of the District Court was entered on March 25, 1942 (R. 124). A petition for appeal was filed and allowed on the same day (R. 125). Jurisdiction is conferred on this Court by Section 3 of the Act of August 24, 1937 (50 Stat. 752, 28 U. S. C. Sec. 380a). Probable jurisdiction was noted on March 30, 1942 (R. 129).

QUESTIONS PRESENTED

1. Whether application to appellee's 1941 wheat crop of the penalty provisions of the amendment of May 26, 1941, to the Agricultural Adjustment Act of 1938, deprived appellee of property without due process of law because that crop was planted and almost ready for harvest before the amendment was passed.

2. Whether the amendment of May 26, 1941, was made invalid, as applied to appellee's 1941 crop, by the failure of the Secretary of Agriculture to mention in a speech on May 19, 1941, that the amendment would provide increased penalties for wheat available for marketing in excess of quotas.

3. Whether the referendum on wheat marketing quotas held on May 31, 1941, was inoperative to make quotas enforceable according to the provisions of the amendment of May 26, 1941, because of the Secretary's speech and because the referendum followed the passage of the amendment by only five days.

4. Whether the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended on May 26, 1941, are within the commerce power of Congress.

5. Whether this action may be maintained against the appellants other than the Secretary of Agriculture.

STATUTE INVOLVED

The statute involved is the Agricultural Adjustment Act of 1938 (52 Stat. 31, 7 U. S. C. § 1281

et seq.), as amended (52 Stat. 202, 54 Stat. 727, 1211, 7 U. S. C. § 1301; 52 Stat. 820, 7 U. S. C. § 1302; 52 Stat. 203, 775, 53 Stat. 1125, 1126, 54 Stat. 232, 7 U. S. C. §§ 1333, 1334, 1335; Pub. No. 74, 384, 77th Cong., 7 U. S. C. A. § 1340). A compilation of relevant statutory provisions will be handed to the Court at the argument.

STATEMENT

1. THE PROCEEDINGS

This is an appeal from a judgment of a statutory three-judge court convened pursuant to Section 3 of the Act of August 24, 1937 (50 Stat. 752, 28 U. S. C. § 389a) (R. 9, 124). Appellants are the Secretary of Agriculture of the United States, three members of the County Agricultural Conservation Committee for Montgomery County, Ohio, and a member of the State Agricultural Conservation Committee for Ohio (R. 125). The action was commenced by a complaint filed by the appellee on July 14, 1941 (R. 1), in which he sought, as a producer of wheat, to enjoin enforcement against him of the marketing penalty imposed by the amendment of May 26, 1941 (Pub. No. 74, 77th Cong., 7 U. S. C. A. § 1340), upon that part of his 1941 crop which was available for marketing in excess of the marketing quota established for his farm (R. 8). Appellee also sought a declaratory judgment that the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, were an unconstitutional ex-

ercise of the commerce power and in violation of the due process clause of the Fifth Amendment (R. 4-9).

The Secretary moved to dismiss the action against him for improper venue, and the other appellants moved to dismiss the complaint on the grounds that they had no power or authority to enforce the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, that authority to enforce such provisions was vested exclusively in the Secretary, and that the granting of the Secretary's motion to dismiss for improper venue would result in the absence of an indispensable party to the case (R. 10-11). On January 22, 1942, the Secretary waived his objection to the venue (R. 11) and filed an answer (R. 12). The motion of the other appellants was denied on March 25, 1942 (R. 103), and on the same day they filed their answer, reserving their exceptions to the overruling of their motion to dismiss (R. 104).

The case was tried on the pleadings and upon stipulated evidence (R. 16), which included proclamations, orders, and regulations issued by the Secretary of Agriculture with reference to acreage allotments and the marketing of the 1941 wheat crop (R. 16-18, 100-101), a radio speech delivered by the Secretary on May 19, 1941 (R. 20-28), and numerous exhibits relating to interstate and foreign commerce in wheat (R. 28-99).

The judgment of the court below, entered on March 25, 1942, permanently enjoined appellants from collecting a marketing penalty of more than 15 cents a bushel on the farm marketing excess of appellee's 1941 wheat crop, from subjecting appellee's entire 1941 crop to a lien for the payment of such penalty, and from collecting a 15 cent penalty except in accordance with the provisions of Section 339 of the Act (52 Stat. 55, 7 U. S. C. § 1339), as that section stood prior to the amendment of May 26, 1941 (7 U. S. C. A. § 1340) (R. 124).

2. PROVISIONS OF THE AGRICULTURAL ADJUSTMENT ACT OF 1938,
AS AMENDED

The purpose, among others, of the Agricultural Adjustment Act of 1938, as amended, is to regulate the volume of wheat moving in interstate and foreign commerce in order to obviate excess surpluses and shortages and prevent the abnormally low, and abnormally high, wheat prices that result from such surpluses and shortages (Sec. 331, 52 Stat. 52, 7 U. S. C. § 1331). Section 332 of the Act directs the Secretary to ascertain and proclaim each year a national acreage allotment for the next crop of wheat (52 Stat. 53, 7 U. S. C. § 1332). This allotment must be an acreage that normally produces an amount of wheat which, when added to the carry-over, will equal a normal year's domestic consumption and exports plus 30 per centum thereof; but in no case may the allotment fall below 55,000,000 acres (Sec. 333, 52 Stat. 53, 775, 53 Stat.

1125, 7 U. S. C. § 1333). The national acreage allotment is apportioned to states, counties, and farms according to the provisions of Section 334 of the Act (52 Stat. 53, 203, 7 U. S. C. § 1334) and regulations issued thereunder by the Secretary. Loans and payments are authorized to wheat farmers who cooperate in a program based upon such allotments (7 U. S. C. A. §§ 1302, 1303, 1340).

Section 335 (a) provides that, whenever it appears that the total supply of wheat as of the beginning of any marketing year will exceed a normal year's domestic consumption and exports by more than 35 per centum, the Secretary shall, not later than May 15 prior to the beginning of such marketing year, proclaim such fact and, during such marketing year, beginning July 1, a compulsory national marketing quota shall be in effect with respect to the marketing of wheat (52 Stat. 54, 7 U. S. C. § 1335 (a)). Between the issuance of such proclamation, however, and June 10, the Secretary must conduct a referendum of farmers who will be subject to the quota to determine whether they favor or oppose it, and if more than one-third of the farmers voting in the referendum oppose the quota, the Secretary must, prior to the effective date of the quota, by proclamation suspend its operation (Sec. 336, 52 Stat. 55, 7 U. S. C. § 1336). If the quota is approved, marketing quotas for each farm are determined according to the provisions of the amendment of May 26, 1941 (Pub.

No. 74, 77th Cong., 7 U. S. C. A. § 1340). The amendment also prescribes the method of ascertaining the farm marketing excess of wheat produced by a non-cooperating farmer, which may not be marketed except under penalty, and provides that such a farmer may avoid payment of any penalty by storing his farm marketing excess or by delivering it to the Secretary. The Secretary is also authorized by the amendment to issue regulations governing such storage and delivery.

3. CHANGES MADE BY THE AMENDMENT OF MAY 26, 1941

The original Act provided that the Secretary should specify in his proclamation the amount of the national marketing quota in terms of a total quantity of wheat and also in terms of a marketing percentage of the national acreage allotment for the current crop that would produce the amount of the national marketing quota (52 Stat. 54, 7 U. S. C. Sec. 1335). The effect of this requirement, upon apportionment of the quota among individual farms, would have been to restrict farmers, including cooperators, to marketing only a portion of the normal production of their acreage allotments (52 Stat. 54, 7 U. S. C. Sec. 1335). In July 1939 the Act was amended to make the quota for any farm the normal or the actual production of the acreage allotment, whichever was larger, plus any carry-over wheat that the farmer could have marketed without penalty in the preceding marketing year (53 Stat. 1126, 7 U. S. C. Sec. 1335). The Act

prior to the amendment of May 26, 1941, also prescribed that any farmer who, while quotas were in effect, marketed wheat in excess of the quota for the farm on which it was produced should be subject to a penalty of 15 cents a bushel on the excess so marketed (52 Stat. 55, 7 U. S. C. Sec. 1339).¹

By the amendment of May 26, 1941, the foregoing quota and penalty provisions were again changed (Pub. No. 74, 77th Cong., 1st Sess., 7 U. S. C. A. Sec. 1340). The quota for each farm became the actual production of the acreage planted to wheat less the normal or the actual production, whichever was smaller, of any excess acreage.² Wheat in excess of this quota, known as the "farm marketing excess" and declared by the amendment to be "regarded as available for marketing" (par. (3)), is subject to a penalty, and the whole crop of the non-cooperating farmer is subject to a lien for the payment of the penalty. The lien may be removed and the penalty avoided, however, by

¹ Section 301 (b) (6) of the Act of 1938 defined marketing as meaning "sale, barter, or exchange" (52 Stat. 40); the amendment of July 2, 1940 (54 Stat. 727), extended the definition to include feeding to commercial poultry and livestock.

² By a subsequent amendment of December 26, 1941 (Pub. No. 384, 77th Cong., 1st Sess.), it was provided that "the farm marketing excess for any crop of wheat for any farm shall not be larger than the amount by which the actual production of such crop of wheat on the farm exceeds the normal production of the farm wheat-acreage allotment, if the producer establishes such actual production to the satisfaction of the Secretary."

storing the farm marketing excess or delivering it to the Secretary. The penalty was fixed at 50% of the basic rate of the loan on wheat authorized to be extended to cooperators, which, by paragraph (10) (a), was increased to 85% of the parity price.¹ In 1940, when the penalty was 15¢ a bushel, the basic loan rate for cooperating farmers was 64¢ a bushel;² by virtue of the amendment, the loan for the 1941 crop was increased to 98¢ and the penalty to 49¢, the increase in each case being exactly 34¢ (R. 71). The loan rate constitutes, in effect, a guaranteed minimum return.³

¹The Act had previously provided that loans would be made under certain circumstances at rates between 52% and 75% of the parity price. (Sec. 302 (b).) Both the original and amended statutes declared that no loans should be made if farmers disapproved of marketing quotas in the referendum provided for. (Sec. 302 (g), 7 U. S. C. Sec. 1302 (g); Act of May 26, 1941, par. (10), 7 U. S. C. A., Sec. 1340 (10).) Under the 1941 amendment, loans were to be made only to cooperators, except that non-cooperators could obtain loans at 60% of the rate for cooperators on so much of the commodity as would be subject to penalty if marketed.

²See United States Department of Agriculture press release, May 20, 1940.

³The loans authorized by the Act are mandatory; the wheat is security for the loan, but the producer is not personally or otherwise liable except in the case of fraud. (Sec. 302 (b) (h), 7 U. S. C. § 1302 (b) (h), 52 Stat. 43, 44.) If the farmer sells the wheat upon which the loan is made for a sum greater than the amount of the loan, he is entitled to keep the difference, but the farmer is not personally liable for any deficiency if the wheat should be sold for less than the amount of the loan (*ibid.*).

Pursuant to this statutory authority the Secretary issued regulations for the administration of wheat marketing quotas for the 1941 crop (R. 18). These regulations covered, in part, the storage of the farm marketing excess and authorized the issuance of marketing cards both to cooperating farmers who had no marketing excess and to non-cooperating farmers who paid the penalty or disposed of their farm marketing excess in compliance with the amendment of May 26, 1941, and the Secretary's regulations. The regulations also provided that wheat not covered by a marketing card issued to the producer was to be taken by the buyer as subject to the marketing penalty and the lien thereon.

4. APPLICATION OF THE ACT TO APPELLEE'S 1941 CROP

Appellee owns and operates a farm in Montgomery County, Ohio, on which he produces winter wheat (R. 2, 18). It is his practice to dispose of each crop in part by sale, in part by feeding grain to poultry and livestock which (or the products of which) are in part sold and in part consumed on the farm, by grinding some of the wheat into flour for home consumption, and by using a part of the grain as seed for the next crop (R. 19).

During the period from 1938 to 1940 no marketing quotas for wheat were in effect. On May 9, 1941, however, the Secretary found, in accordance with Section 335 of the Act, that the total supply of wheat as of July 1, 1941, would exceed a normal

year's domestic consumption and exports by more than 35% and proclaimed a national marketing quota for the marketing year 1941-1942 (R. 17). The quota was approved in a referendum held on May 31, 1941, pursuant to Section 336, in which, according to the Secretary's finding, 81 percent of the 559,630 votes cast were in favor of the quota (R. 17).

On May 13, 1940; approximately a year before the national wheat marketing quota for the 1941 crop was proclaimed, the Secretary had announced, pursuant to Sections 332 and 333 of the Act, as amended, that the national acreage allotment for the 1941 wheat crop was 62,000,000 acres (R. 100). Through the appellant County Committee appellee received notice in July 1940, before planting his 1941 crop, that the allotment for his farm was 11.1 acres and that the normal yield was 20.1 bushels an acre (R. 18-19). Appellee, however, planted 23 acres of winter wheat in the fall of 1940, from which he harvested in July 1941, subsequent to the proclamation and approval of a national marketing quota, approximately 462 bushels of wheat (R. 3, 119). His farm marketing excess was 239 bushels (R. 19). Appellee was notified of his acreage allotment and normal yield a second time in July 1941, just prior to harvest (R. 19). Appellee refused to store his excess wheat, deliver it to the Secretary, or pay the prescribed penalty. In consequence, no marketing card was issued to him (R. 19), and, upon the sale of any

part of his crop; the buyer would be required to pay the marketing penalty, with a right to deduct the amount thereof from the purchase price. (Act of May 26, 1941, par. (8).)

5. THE NATURE OF THE WHEAT INDUSTRY

Interstate commerce.—The stipulated record contains a "Statement of Economic Data of the Wheat Industry" (R. 28-99). This shows the states (R. 35-48) and nations (R. 32) in which wheat is grown and the dependence of the South and East upon the western states for most of their bread grain supplies (R. 29). The vast extent of the interstate and foreign movements of wheat and flour is amply demonstrated (R. 49-66). Indeed, no other grain has the importance of wheat in interstate commerce (R. 49).

Marketing and Distribution of Wheat.—Wheat farmers sell all of the wheat which they produce except that needed for seed, feed, and food on the farm. The value of the wheat sold in 1940 was \$424,770,000, or 78 percent of the total (R. 53, 61). During the five-year period, 1931-32 to 1935-36, the average production of wheat in the United States was 680,603,000 bushels. The distribution of the total production was as follows: wheat sold from the farm, 484,673,000 bushels; wheat fed on the farm where grown, 107,608,000 bushels; wheat used as seed on the farm where grown, 72,567,000 bushels; and wheat used in the farm household, 15,755,000 bushels (R. 60). For the 17-year period,

1923-24 to 1939-40, the total amount of wheat used for seed averaged 83 million bushels, varying from a low of 73 million bushels in 1939-40 to a high of 97 million bushels in 1936-37. During the same period, the amount of wheat fed to livestock on farms where grown averaged 86 million bushels, varying from 28 million bushels in 1925-26 to 174 million bushels in 1931-32 (R. 68, 71, 78, 79).

The manner in which wheat is distributed is described in some detail at R. 49-54. Most farmers in the United States market their wheat to local country elevators, although, in some areas, a substantial amount of wheat is sold to trucker-buyers. Some wheat is consigned to terminals, and, in some areas, small amounts of wheat are sold through local feed stores. Farmers usually retain sufficient wheat for seeding, for feed for their poultry or livestock, and some for grinding for their household use. This diversified disposition of the farm production of wheat and the various methods of marketing make it difficult accurately to account for the actual amount, as well as the final disposition, of an individual farmer's wheat production. (R. 49-50.)

There are over 30,000 local elevators, some operated by local independent grain dealers, some by farmers' cooperative associations, and others by large grain firms with headquarters in cities having terminal markets. These country elevators have a small amount of storage capacity and, consequently, must handle the grain as rapidly as possible with shipment to mills or terminal elevators

scattered throughout the country near large mills and wheat exporting ports. It has been estimated that considerably over a million grain cars are used for this purpose during each year. After buying the wheat from a farmer, the operator of the country elevator usually sells the wheat as soon as possible to elevators or mills or consigns it to a commission merchant for sale, usually through a Board of Trade. There are large terminal markets in numerous cities (R. 50).

Approximately 500,000,000 bushels of wheat are ground each year in the United States by about 4,000 mills. The flour reaches the consumer as the product of about 35,000 bakeries or through about 350,000 retail grocery stores. Because of the development of specialized flour requirements, commercial millers must have access to, and must purchase, wheat of the various classes and physical qualities to enable them to cater to all classes of trade. This results in the blending of wheat of the various classes and of widely scattered origins. (R. 51.)

The effect of an excessive supply of wheat upon interstate commerce is graphically indicated by the congestion which results in transportation and storage facilities. In 1922 and 1929 the excessive supply clogged terminal markets and railroad sidings for miles around and forced the railroads to refuse to transport additional wheat and local elevators to place an embargo upon the receipt of wheat from farmers (H. Rep. No. 1645, 75th Cong.,

2d Sess., pp. 29-30). "In connection with the abnormally large supply of wheat and other grains for the 1941-42 marketing year [the year involved in this case], congestion has occurred in a number of markets, necessitating steps which have interrupted the regular flow of grain to those points. * * * Because of the tight storage situation at a number of markets, partial embargoes have been instituted to prevent further congestion and the tying up of railroad cars vitally needed in the defense effort" (R. 51).

Wheat Supply, Demand, and Price.—The inelasticity of demand for wheat causes changes in the supply materially to affect the price. The balance between supply and demand means fair prices to the farmer and the consumer. ° A supply substantially in excess of the demand, plus a reasonable reserve, means ruinous prices to the farmer (R. 67). The human consumption of wheat in the United States is subject to less variation than that of most commodities, due largely to the importance of bread in the diet and the relatively inelastic demand for it. The amount of wheat used for seed is also fairly constant, while that used for livestock feed fluctuates widely with changes in livestock prices and in the relation between the prices of alternative feeds and the price of wheat. There is also a marked increase in the feeding of wheat to livestock in years in which large quantities of low-grade wheat are produced (R. 68, 78, 80).

A large world supply means a low world price, and a small world supply results in a high world

price (R. 67, 72, 73). The production of wheat in one part of the world affects the market for wheat produced in other countries (R. 67, 74). The trend of world production has been upward since 1923 (R. 67, 76, 77). World wheat prices declined in the period 1924 to 1933 with the increase in world supplies (R. 68, 72, 73). The sharp decline in prices after 1929 was caused, in part, also by the general decline in industrial activity and commodity prices. There was a movement upward in world wheat prices from the spring of 1933 to the summer of 1937 reflecting world-wide recovery from depression, currency depreciation, and reduced production. In 1938, world prices again declined sharply as a result of a record world production. In 1940-41, large supplies in surplus producing countries and reduced trade held world wheat prices to low levels. (R. 68, 69.)

In the absence of Government wheat programs, the price of wheat in the United States is generally closely related to the world wheat price (R. 69, 75). Domestic wheat prices up to 1933 followed in general the trend of world wheat prices, but from the spring of 1933 to the spring of 1937, domestic prices were unusually high in relation to world prices, as the result of small crops in the United States. In 1937, the production in the United States was large and prices declined. In 1938, with domestic production again large, accompanied by a record world crop and somewhat lower commodity prices generally, prices again de-

clined and would have declined still further except for the United States loan and export-subsidy programs. Prices received by growers during 1939 and 1940 were generally higher than in 1938, largely as a result of a more complete operation of the program of federal assistance to wheat farmers. (R. 69.)

The income to wheat farmers in 1939, 1940, and 1941 has been greatly increased as a result of agricultural programs in effect during such years (R. 99). These programs consist of price supporting loans, conservation and parity payments, crop insurance, and the limited use of an export subsidy program (R. 97). If the 1941 crop of wheat were sold on the basis of world prices, farmers would probably receive only about 40 cents per bushel (R. 71). The loan rate of 98 cents per bushel for the 1941 crop of wheat has resulted in much higher wheat prices to all producers of wheat (R. 98).

Governmental Aid to Wheat Producers in Other Countries.—The extent of the production of wheat and the important influence of wheat upon the agricultural economy of many countries has resulted in governmental intervention and aid. This intervention has been more pronounced with respect to wheat than any other agricultural commodity. The general purpose of intervention has been to protect the domestic prices received by wheat producers. Many countries, particularly wheat importing countries, have sought in recent years to become more self-sufficient. Various measures were

adopted for the purpose of increasing their own production of wheat. These devices included import quotas or licenses, higher import duties, limitations of the amount of imported wheat for mixture with domestic wheat for the manufacture of flour, foreign exchange control, fixed or guaranteed minimum prices, and Government operated monopolies of the wheat trade. The operation of these measures resulted in an increased production of wheat in the importing countries and lessened the demand for wheat grown in exporting countries in excess of their domestic needs (R. 91).

The four large exporting countries, namely, Argentina, Australia, Canada, and the United States, were, in consequence of the actions of importing countries, forced to adopt governmental programs for bringing relief to their wheat growers because of abnormally excessive supplies. These measures have included subsidy payments to growers, guaranteed minimum prices, export bounties, currency depreciation, and barter or other preferential trade agreements. The steps taken by these countries, as in importing countries, have generally evolved toward government control, though in varying degrees depending upon the individual country's situation and problems. The exporting countries have also taken the initiative in discussions tending to result in an international wheat agreement by means of which the international trade in wheat may be increased and apportioned on an equitable and "fair price" basis (R. 93).

6. OPINION, FINDINGS, AND DECREE OF THE COURT BELOW

The court below filed findings of fact and conclusions of law (R. 118). In addition to the facts already mentioned, the court found that a radio speech delivered by the Secretary of Agriculture on May 19, 1941, in which he urged wheat farmers to vote for quotas in the referendum of May 31, 1941, misled appellee and other farmers who had planted wheat in excess of their acreage allotments because the Secretary failed to state that the amendment of May 26, 1941, provided for an increase in the penalty and subjected the entire crop of the non-cooperating wheat farmer to a lien for the payment of the penalty (R. 121-122).

The court held that the penalty and other enforcement provisions of the May 1941 amendment, as applied to appellee's 1941 wheat crop, were retroactive legislation in violation of the due process clause of the Fifth Amendment or, in the alternative, that the Secretary's misleading speech and the fact that only five days intervened between the amendment of May 26 and the referendum of May 31 rendered inequitable the application of the increased penalty and the lien provision of the amendment to appellee's 1941 crop (R. 108-112, 122-123). The court also held that appellants other than the Secretary of Agriculture were proper parties (R. 123). In view of its rulings on due process and the equities of the case, the court stated that it was "unnecessary to pass on the other ques-

tion raised by the plaintiff's bill of complaint" (R. 112). Appellants were enjoined from enforcing the quota provisions against appellee except in accordance with Section 339 of the Act (52 Stat. 55, 7 U. S. C. § 1339) as in effect prior to the amendment of May 26, 1941 (R. 124).

Circuit Judge Allen dissented from the finding with respect to the Secretary's speech and from all the conclusions of law (R. 123), and in a dissenting opinion (R. 113) supported the Act and the amendment of May 26, 1941, as a constitutional regulation of commerce, not violative of due process, and not inequitable as applied to appellee's 1941 crop.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding invalid the wheat marketing quota provisions of the amendment of May 26, 1941, in so far as they subjected appellee's farm marketing excess of wheat from the 1941 crop, when such excess became available for marketing, to a marketing penalty of 49 cents a bushel computed under said amendment.

2. In holding that the increase in the penalty and the lien provision contained in the amendment of May 26, 1941, were retroactive legislation denying to appellee due process of law when applied to his 1941 crop, which had been planted prior to the effective date of the aforesaid provisions.

3. In holding that application of the enforcement provisions of the May 1941 amendment to appellee's 1941 crop was inequitable by reason of

the Secretary's speech on May 19, 1941, and circumstances surrounding the holding of the referendum on May 31.

4. In holding that the action might be maintained against appellants other than the Secretary of Agriculture.

SUMMARY OF ARGUMENT

I

A. Appellee had notice of his acreage allotment, on which his quota was based, before his 1941 crop was planted. After planting but before the wheat was harvested or marketed, quotas were definitely made operative for the 1941 crop, and the penalties for excess wheat available for marketing were increased by the amendment of May 26, 1941. Since the amendment's restrictions did not apply until after the harvesting of the crop, it was not being applied retroactively or in violation of due process. *Mulford v. Smith*, 307 U. S. 38.

B. A radio speech by the Secretary of Agriculture on May 19, 1941, in which he failed to mention the increase in penalties under the amendment approved on May 26, 1941, did not render the amendment unconstitutional or make the referendum of May 31 inoperative. The speech, which was misconstrued by the court below, was not in any way misleading, and there was no occasion for the Secretary to refer in it to the penalty provisions of the new amendment. But even if such were not the case, the speech would not have invalidated the

statute or justified going behind the result of the referendum to inquire into the factors which influenced the voters. *United States v. Rock Royal Co-op.*, 307 U. S. 533. Nor was the court warranted in holding the referendum inoperative because it was held only five days after the amendment increasing the penalties was passed. The court plainly erred in disregarding the language of the statute because of its view that the Secretary's speech and the short time between the amendment and the referendum caused the "equities of the case" to "favor the plaintiff."

II

The marketing quota and penalty provisions are a valid exercise of the commerce power. Similar provisions for tobacco were sustained in *Mulford v. Smith*, 307 U. S. 38. The fact that the penalty applies to excess wheat which is available for marketing, although actually it may be consumed on the farm as feed, seed or household food, does not convert the regulation from one of marketing to one of production or make it invalid. Because of the relationship of such wheat to the national price and supply, Congress reasonably concluded that orderly interstate marketing and reasonable interstate prices could best be achieved if the quota system applied to all wheat available for marketing and not merely to that actually sold.

In addition, the method of regulation adopted was chosen because of the practical difficulties in the way of enforcement of a system limited to wheat

sold. The task of checking up on all sales by over a million wheat producers would have been well-nigh impossible. Under the present plan enforcement is feasible because it is necessary only to know the amount of wheat acreage planted by the farmer and the normal yield per acre. Congress is entitled to choose the means which it deems appropriate and necessary to the effective carrying out of its policy of keeping excess wheat off the interstate market.

That the wheat quota plan does not regulate production appears from the provision for storage of excess wheat without penalty. But even if the Act were regarded as a regulation of production, it would not be invalid. The amount of wheat produced undoubtedly has a substantial and direct effect upon the amount shipped and upon price; and control of the amount produced would plainly be a reasonable means of exercising the power of Congress over the quantity of wheat shipped in interstate commerce and its price. Cf. *United States v. Darby*, 312 U. S. 100; *Chicago Board of Trade v. Olsen*, 262 U. S. 1.

III

The action may not be maintained against the appellants who are members of the county and state committees. They have no power to enforce the law or otherwise injure appellee. There is no basis for the granting of equitable relief against them, nor, indeed, any case or controversy in the constitutional sense.

ARGUMENT

I

**APPLICATION OF THE INCREASED PENALTIES PRESCRIBED
BY THE AMENDMENT OF MAY 26, 1941, TO APPEL-
LEE'S 1941 CROP IS NOT UNLAWFUL**

**A. THE ACT WAS NOT RETROACTIVELY APPLIED; *MULFORD v.
SMITH* IS DIRECTLY IN POINT**

Appellee's 1941 crop was planted in the fall of 1940, before the amendment of May 26, 1941, was passed and before the wheat marketing quotas for 1941 became operative. Appellee contends that the application of the marketing quota provisions, and in particular, of the increased penalties prescribed in the amendment of May 26, 1941, to his 1941 crop gives the statute retroactive effect in violation of the due process clause. This argument is completely answered by the decision of this Court in *Mulford v. Smith*, 307 U. S. 38.

A mere statement of the facts will make this obvious. In July of 1940 a wheat acreage allotment of 11.1 acres and a normal yield of 20.1 bushels an acre for the 1941 crop were established for appellee's farm in accordance with the provisions of the Act, and notice thereof was given the appellee prior to the planting of his 1941 crop (R. 18). Despite this fact appellee sowed 23 acres of wheat in the fall of 1940 for harvest in July 1941 (R. 19). On May 9, 1941, prior to the beginning of the marketing year for the 1941 crop, the Secretary of Agriculture proclaimed that the total sup-

ply of wheat as of the beginning of the marketing year July 1, 1941-June 30, 1942, would exceed a normal year's domestic consumption and exports by more than 35 percent, and thereupon, by virtue of the provisions of Section 335 of the Act, a national marketing quota was in effect for the 1941 crop of wheat (R. 17-18). Although in prior years the total supply of wheat had not been such as to bring wheat marketing quotas into effect, the Act had been in effect since 1938 and the appellee knew, or should have known, at the time he planted his 1941 crop of wheat, that the total supply of wheat as of July 1, 1941, might be such as to bring a national marketing quota into effect with the result that the appellee would have to comply with a quota based on his acreage allotment previously established.

The Act, as in effect at the time appellee planted his crop, provided that in the event marketing quotas should become effective a penalty of 15¢ per bushel was to be paid on all wheat marketed * from his farm in excess of the marketing quota for the farm. On May 26, 1941, the amendment increasing the penalty on the farm marketing excess of wheat to 49¢ per bushel, but at the same time increasing the guaranteed loan rate (see p. 9, *supra*), became effective. Thereafter, on May 31, 1941, in accordance with the provisions of Section 336 of the Act, a referendum was held in which 81 percent of the

* For the definition of marketing, see page 8; n. 1, *supra*.

farmers participating voted in favor of quotas (R. 17). In July of 1941, prior to the time at which the appellee harvested his crop, he was again informed of the amount of his acreage allotment and normal yield and was informed also of the amount of his farm marketing excess and of the enforcement provisions of the Act. Despite this fact, appellee refused to store, turn over to the Secretary, or pay a penalty on his excess wheat and under the provisions of the Act he was, therefore, unable to sell any of his wheat without deduction of the applicable penalty by the buyer from the purchase price (R. 19).

The majority of the court below held that because appellee's wheat was planted and almost ready for harvest at the time the amendment providing for increased penalties was passed, the amendment amounted to retroactive legislation in violation of the due process clause.

This holding plainly is inconsistent with the decision of this Court in *Mulford v. Smith*, 307 U.S. 38. There the Act had been approved and a quota for tobacco had been proclaimed in February 1938. The required referendum was held in March, regulations for the fixing of farm quotas were issued in June, and shortly before the auction markets opened in August the growers received notice of their individual quotas. Prior to the time when the Act was approved and the quota proclaimed in February 1938, the tobacco growers had planted their

seedbeds and prepared their lands for setting out the plants. After the date of the approval of the Act but prior to the time the growers received notice of their quotas, the tobacco had been transplanted, cultivated, harvested, cured, and graded. Until the receipt of the notice of quota, none of the tobacco growers knew or could have known the exact amount of his quota. The contention was made that because of these facts the statute operated retroactively and amounted to a taking of property without due process of law. This Court disposed of the contention as follows (p. 51):

The argument overlooks the circumstance that the statute operates not on farm production, as the appellants insist, but upon the marketing of their tobacco in interstate commerce. The law, enacted in February, affected the marketing which was to take place about August 1st following, and so was prospective in its operation upon the activity it regulated. The Act did not prevent any producer from holding over the excess tobacco produced, or processing and storing it for sale in a later year; and the circumstance that the producers in Georgia and Florida had not provided facilities for these purposes is not of legal significance.

The same rule applies in this case. The statute here does not operate on production but upon the disposition of the excess wheat which is available for marketing. As applied to wheat not disposed of or marketed when the amendatory act was

passed, it is obviously prospective in its operation. Likewise, it does not prevent any farmer from holding over and storing his excess wheat. It expressly provides that the penalty on the excess may be avoided if such excess is stored. Furthermore, if the excess wheat is stored, the farmer is permitted by the amendment to obtain a loan on such wheat at the rate of 60 percent of the rate of the loan provided for cooperators, and, in a subsequent year, he may market the wheat thus stored, using it to fill his quota if quotas are in effect. Act of May 26, 1941, pars. (3), (4), (6), (8), and (10) (7 U. S. C. A., Sec. 1340, pars. (3), (4), (6), (8), and (10)).

Indeed, it is apparent from a comparison of the facts in the two cases that the position of the appellee here is much weaker than that of the tobacco growers in the *Mulford* case. In that case the Act providing for marketing quotas and penalties had not even been passed at the time the tobacco growers planted their seed beds, and the tobacco had been harvested and cured before the growers received notice of their quotas. Here the Act providing for marketing quotas and penalties had been in existence for over two years before appellee planted his 1941 crop, he had received notice of his acreage allotment and normal yield before such planting, and he also had knowledge more than 30 days before harvest time of his farm marketing excess of wheat and the increased penalties to be

paid on such excess unless it was stored or turned over to the Secretary. Furthermore, the storage of wheat to avoid payment of the marketing penalties is entirely feasible. In the *Mulford* case, on the contrary, the Court took note of the producers' argument that the legal right to store their excess tobacco was of little practical value because of the absence of facilities and held this fact to be without legal significance.

B. THE RADIO SPEECH OF THE SECRETARY OF AGRICULTURE AND THE SHORT TIME ELAPSING BETWEEN THE AMENDMENT OF MAY 26, 1941, AND THE REFERENDUM OF MAY 31, 1941, ARE IMMATERIAL

The court below distinguished the *Mulford* case on the basis of a radio speech by the Secretary of Agriculture on May 19, 1941, and because only five days elapsed between the amendment of May 26, 1941, and the referendum on May 31. It held, in part, that (R. 123):

The amendment of May 26, 1941, to the wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, in so far as said amendment related to the 1941 crop of wheat, is invalid because of the failure of the Secretary of Agriculture to forewarn wheat farmers, in his radio address made on May 19, 1941, of the increase in the marketing penalty as provided by such amendment.

In addition, although no such issues appeared in the stipulation as to the questions presented for

decision (R. 19-20), alternative grounds of the decision below were "that the equities of the case * * * favor the plaintiff" (R. 112, 122), and that the referendum of May 31 was inoperative to subject the 1941 crop to the amendment of May 26 (R. 123). The latter point would seem to present a question of statutory construction.

We know of no principle by which a court may ignore an admittedly applicable statute in favor of "the equities of the case," unless the inequity is such as to make the statute so arbitrary as to violate the due process clause or some other constitutional provision. Accordingly, we think it necessary only to show that the factors upon which the court relied did not render application of the quota system and the penalty provisions to appellee's 1941 crop either unconstitutional or in contravention of the statute.

1. The Secretary's speech did not invalidate the statute or the referendum

(a) Although the court below held to the contrary, it scarcely seems necessary to argue that a radio speech by an administrative official cannot nullify a law passed by the Congress. For that reason the remainder of this discussion will be restricted to the question of statutory construction.

In answer to the contention that the speech invalidated the referendum of May 31 and thus

prevented compliance with a statutory prerequisite to the establishment of marketing quotas, it is necessary only to refer to this Court's decision in *United States v. Rock Royal Co-op.*, 307 U. S. 533. That case involved a similar claim that an allegedly misleading statement by the Department of Agriculture invalidated a referendum under the Agricultural Marketing Agreement Act of 1937. There, it was contended that for such reason an order fixing milk prices should not be enforced. The evidence showed, among other things, that an explanatory pamphlet published by the Department of Agriculture contained statements to the effect that the milk order would require all handlers subject thereto to pay to producers the uniform price established thereunder, whereas, in fact, it was provided in the order, which, with the pamphlet, was circulated among the producers prior to the referendum, that cooperatives otherwise subject to the order as handlers were exempt from this requirement. Furthermore, the pamphlet made no mention of the fact that milk sold outside the marketing area was not subject to the classified prices applicable to milk sold in the marketing area. This Court held the order enforceable, saying (p. 559):

The Secretary of Agriculture declared that three-fourths of the producers affected by the Order approved its terms. The litigants do not deny that three-fourths of the voters voted for the institution of the Order. There is no authority in the courts to

go behind this conclusion of the Secretary to inquire into the influences which caused the producers to favor the resolution.

The Court in the *Rock Royal* case assumed that the Department's explanatory pamphlet contained "erroneous statements" (p. 558). Such an assumption, as will be shown, would have no warrant in the case at bar. But in any event it is apparent that the *Rock Royal* case is controlling, and that remarks made during the course of a speech by the Secretary do not invalidate a referendum subsequently held.

(b) There is also no basis for the assumption by the court below that farmers were in any way misled by the Secretary's speech.

In support of its position the court relied on the Secretary's failure to mention the increased penalties contained in the bill subsequently signed by the President on May 26, and on the Secretary's statement that (R. 111):

Because of the uncertain world situation, we deliberately planted several million extra acres of wheat. * * * Farmers should not be penalized because they have provided insurance against shortages of food.

It is perfectly apparent from the context in which the above language appears, and from the speech as a whole, that, as Circuit Judge Allen, dissenting, declared, the Secretary (R. 113-114) "was speaking of penalties in the form of ruinously low prices which result from an excess sup-

ply of any basic farm commodity. No reference to enforcement provisions of any legislation, new or old, could reasonably be understood to be intended from the reference to low prices as penalties, * * *." Since no summary or paraphrasing of the speech can demonstrate the accuracy of this statement as persuasively as the speech read as a whole, the Court is respectfully referred to the speech itself as set forth at R. 20-28.

The assumption by the majority of the court below that the quoted passage meant that the Secretary had encouraged farmers to plant in excess of their acreage allotments would mean that he had deliberately urged them to disregard the very law he was administering and enforcing. A much more reasonable interpretation of his remarks is that he had established the national acreage allotment for the 1941 crop at a high level in order to avoid a shortage, and that the wheat farmers should not be penalized by the low prices which would result if a quota system was not made operative.

Apart from the speech itself, which we submit proves nothing, the record contains no evidence nor suggestion that the Secretary's remarks misled the farmers voting in the referendum nor, indeed, any other evidence on the subject at all. It cannot be assumed that a short passage in a speech over the radio contained all the information available to

farmers with respect to the May 26 amendment to the statute. The Court is undoubtedly aware of the fact that such a subject would be discussed in local newspapers and farm publications, and that information would be circulated through the wheat-farming communities by employees of the Department of Agriculture, by farmers engaged in administering the farm program, and by others. That this actually occurred is indicated in part by a press release, fully and accurately summarizing the May 26 amendment, which was issued by the Department of Agriculture immediately upon its enactment (see Appendix, *infra*, pp. 61-64).

The court below was particularly disturbed by the Secretary's failure in his speech to call the farmers' attention, in advance of the referendum, to the increased penalties imposed by the new law. But there was no reason why he should have done so. The farmers were not voting on the means by which a quota system was to be made effective, but on whether they approved the establishment of quotas at all. Section 336 of the Act, which provides for the referendum, states merely that the vote shall be taken "to determine whether such farmers favor or oppose such quotas." It was certainly not the intention of Congress that the referendum be held to determine whether the farmers favor a quota system only so long as its penalties are too slight to make the quotas enforceable. The paramount purpose of the Act is to keep off

the market an abnormally excessive supply of wheat, an object which will be accomplished to the extent that farmers comply with the quotas without incurring any penalties. Accordingly, it may reasonably be assumed that the producers favoring quotas were voting for an effective quota system which would protect them against low prices, and not for a plan which would fail because of the inadequacy of the statutory sanctions.

The Secretary of Agriculture found and proclaimed that 81% of the farmers participating in the referendum voted in favor of the quotas. The appellee does not deny this fact. There is no evidence that any producer misunderstood what he was voting for, that the vote of any producer would have been different had the Secretary mentioned the increased penalties in his speech, or that any producer was not fully informed as to the increased penalties provided in the amendment. Certainly on these facts the courts should not go behind the finding of the Secretary. Cf. *United States v. Rock Royal Co-op.*, 307 U. S. 533.

2. The Fact That the Referendum Followed the Amendment by Only Five Days Did Not Render The Referendum Inoperative

The majority of the court below apparently were of the opinion (R. 111-112) that the passage of only five days between the amendment of May 26 increasing the penalties and the referendum of May

31, 1941, made it inequitable and, therefore, unlawful to apply the penalty provisions of the amendment to the 1941 crop. It seems to have been assumed that, because of the shortness of time between the passage of the amendment and the holding of the referendum, the farmers could not have known of the increased penalties provided in the amendment, and that the vote might have been different if they had known this fact. This view is obviously without merit.

As authority for this conclusion, the majority of the court below relied (R. 111) upon the following statement in the *Mulford* case (p. 46-47):

In the light of the fact that the appellants received notice of their quotas only a few days before the actual marketing season opened, the maintenance of actions based upon collection of the penalties would have been a practical impossibility. We are of opinion, therefore, that a case is stated for the interposition of a court of equity.

The above passage from the *Mulford* opinion was concerned only with the jurisdiction of the District Court as a court of equity, not with the merits of the case or the equitable nature of the Act or its application. As has been shown (*supra*, pp. 26-29), the Court expressly rejected on the merits the contention that anything unlawful had occurred. Obviously the decision below can find no support in this or any other portion of the *Mulford* opinion.

The error of the court in invalidating the referendum because of the increase in penalties a few days before it was held is shown sufficiently by what we have said in answering the argument as to the Secretary's failure to mention the increased penalties in his radio address (see pp. 30-35, *supra*). In summary, (1) the courts should not go behind the finding of the Secretary that the vote was favorable and inquire into the influences causing the producers to vote favorably. (*United States v. Rock Royal Co-op.*, 307 U. S. 533); (2) there is no showing that any producer was without knowledge of the amendment or the increased penalties, or that he would have voted differently if he had had greater knowledge, or that he in any way misunderstood what he was voting for; (3) the producers were not voting as to whether penalties should be increased, but only as to whether the marketing quotas should be approved, so that it was immaterial whether they had knowledge of the increased penalties at the time they voted.

II

THE MARKETING QUOTA AND PENALTY PROVISIONS ARE A VALID EXERCISE OF THE COMMERCE POWER

Appellee contends that the marketing quota and penalty provisions of the amendment of May 26, 1941, are not valid regulations of interstate commerce. This question was not passed upon by the

majority of the court below (R. 112). Circuit Judge Allen in her dissenting opinion, however, held the Act to be a valid exercise of the commerce power.

The objects of the statute and the economic facts upon which it rests are set forth in the legislative finding in Section 331. The facts thus found are not challenged and their accuracy is confirmed by the stipulation of facts in the record (R. 28-103). See pp. 12-18, *supra*.

Section 331 states that wheat is a basic source of food produced by more than a million farmers, and that in the form of wheat or flour, it "flows almost entirely through instrumentalities of inter-

Although the majority of the court below stated in the opinion that they deemed it unnecessary to pass upon this question in view of their decision on the other points (R. 112), it is to be noted that the disposition of the case made by the court of necessity is inconsistent with appellee's position that such a regulation is not within the commerce power. The court concluded (R. 123) that a penalty of 15¢ a bushel on appellee's farm marketing excess could be collected in accordance with the provisions of Section 339 of the Act of 1935, as that section was in effect prior to the amendment of May 26, 1941, and ordered (R. 124) that the appellants be enjoined from collecting a penalty greater than this. Section 339 of the Act prior to the amendment required payment of a 15¢ penalty on all wheat "marketed" in excess of the quota; and "marketed," as it was defined in the Act prior to the amendment, meant to dispose of by feeding to poultry and livestock as well as by selling. (Sec. 301 (b) (6), 54 Stat. 727.) Appellee's contention that the amendment regulates production is based on the ground that it subjects to penalties wheat used on the farm, such as that fed to livestock, as well as wheat which is sold.

state and foreign commerce;" that abnormally excessive and deficient supplies of wheat directly affect and burden interstate and foreign commerce; that excessive supplies overtax transportation and milling facilities, depress the price of wheat in interstate and foreign commerce, and disrupt the orderly marketing of wheat in such commerce; that deficient supplies result in an inadequate flow of wheat and its products in interstate and foreign commerce and in excessive increases in the prices of wheat and its products in such commerce; that surpluses result in unreasonably low, and shortages in unreasonably high, prices for wheat; that it is in the interest of the general welfare that interstate and foreign commerce in wheat and its products be protected from such surpluses and shortages, and that an adequate supply for domestic consumption and export be maintained; that without federal assistance the farmers cannot prevent the recurrence of such surpluses and shortages; that the provisions of the Act are necessary to minimize recurring surpluses and shortages, provide for adequate reserve supplies, and maintain an adequate flow of wheat and its products in interstate and foreign commerce; and that the provisions of the Act "for regulation of marketings by producers of wheat whenever an abnormally excessive supply of such commodity exists are necessary in order to maintain an orderly flow of wheat in interstate and foreign commerce under such conditions."

That Congress has the power to fix marketing quotas to accomplish these purposes was expressly held in *Mulford v. Smith*, 307 U. S. 38, which sustained the validity of the provisions of this very Act fixing marketing quotas for tobacco.* The findings of Congress as to the purpose of the law as it applies to tobacco are similar to those relating to wheat. In the *Mulford* case this Court said (p. 48):

Any rule, such as that embodied in the Act, which is intended to foster, protect and conserve that commerce, or to prevent the flow of commerce from working harm to the people of the nation, is within the competence of Congress. Within these limits the exercise of the power, the grant being unlimited in its terms, may lawfully extend to the absolute prohibition of such commerce, and *a fortiori* to limitation of the amount of a given commodity which may be transported in such commerce. The motive of Congress in exerting the power is irrelevant to the validity of the legislation.

The record discloses that, just as was true of tobacco, a large proportion of the wheat produced

* Farm marketing quotas for tobacco and for cotton have been continuously in effect since the approval of the Act on February 16, 1938, except, in the case of tobacco, for the year 1939. The cotton marketing quota provisions of the Act, which were based on acreage allotments, were held to be within the competence of the Congress under the commerce power in *Troppey v. LaSara Farmers Gin Co.*, 113 F. (2d) 350 (C. C. A. 5).

moves through the channels of interstate and foreign commerce (R. 49-66). In 1940, 78 percent of the wheat produced was sold by the farmers (R. 53), and, although figures are unavailable to show precisely the amount, the proportion which moved out of the state of origin was undoubtedly large. Indeed, this Court itself has noted "the flow of wheat from the West to the mills and distributing points of the East and Europe." *Chicago Board of Trade v. Olsen*, 262 U. S. 1, 36.

Differences in the mechanics of marketing and in the uses of wheat and tobacco have resulted in differences in the details of the marketing quota systems adopted for the two crops. Practically all tobacco is sold commercially, primarily through a relatively small number of auction markets. On the other hand, a substantial quantity of wheat is consumed on the farm as feed for livestock, as seed, and, to a slight extent, as food. The wheat sold is distributed through a vast number of local elevators,* truck-buyers, local feed stores, and terminals (R. 49-50). In the regulation of tobacco it was found necessary, for administrative reasons, to apply marketing quotas to all tobacco, whether distributed and used interstate or intrastate. In the case of wheat, for reasons indicated below, it has similarly been found necessary to apply the quotas to all wheat consumed and distributed, whether interstate or intrastate.

* There are over 30,000 such elevators alone (R. 50).

“But because the wheat marketing penalty applies to excess wheat which is available for marketing, although it may be actually consumed on the farm, appellee claims that the wheat regulation is one of production and not of marketing and that accordingly the *Mulford* case is inapplicable.

That the wheat quota plan does not control or seek to control the amount planted or produced is apparent from the provisions for the storage of the quantities produced in excess of quotas. A farmer may grow as much as he pleases without penalty, so long as he is willing to store the excess so that it will not be available for marketing during the marketing year. The amount so stored may be marketed in subsequent years in which no quotas are in effect, or to fill the quota established for any subsequent year. The statute even provides that loans will be made on wheat so stored. See pages 27-28, *supra*.

But even if true, appellee's characterization of the wheat quota system as a regulation of production would not prove it to be invalid. The power of Congress extends to intrastate activities “which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means of”¹⁰ protection, or effective regulation, of interstate commerce. *National Labor Relations Board v. Jones & Laughlin Steel*

¹⁰ *United States v. Wrightwood Dairy Co.*, No. 744, decided February 2, 1942.

Corp., 301 U. S. 1; *United States v. Darby*, 312 U. S. 100; *United States v. Wrightwood Dairy Co.*, No. 744, decided February 2, 1942; *Cloverleaf Butter Co. v. Patterson*, No. 28, decided February 2, 1942. *United States v. Darby* demonstrates the validity of direct regulation of production as an appropriate means of excluding from commerce commodities produced under conditions thought to be undesirable; it was there held that Congress could regulate wages and hours in factories producing for commerce. Certainly, on the same theory, valid control of the amount of a commodity to be shipped in commerce may be effectuated by regulation of the amount produced, for the amount produced may, as here, have a substantial and direct effect upon interstate movements.

As the stipulated record indicates and as would in any event be obvious, the amount produced also has an equally substantial effect upon the price of wheat sold in interstate commerce. Price is largely determined by the balance of supply and demand (R. 67-72). The supply of wheat "is made up of production and carry-over" (R. 67), and carry-over, of course, is a factor dependent upon the relation between production and demand in previous years. Certainly the amount of wheat produced substantially affects the interstate price of wheat, probably in the long run to a greater extent than the intrastate transactions in grain futures, regulation of which, because of its effect

on wheat prices, was upheld in *Chicago Board of Trade v. Olsen*, 262 U. S. 1. It can be said of the quantity produced, as of such sales, that, if it "affect[s] the country-wide price of" wheat, it "directly affect[s] the country-wide commerce in it." (*Id.* at 40.)¹¹

The present Act does not go as far, however, as to regulate production; the quota system applies to wheat only when it becomes available for marketing. Although the quotas are, for practical reasons,¹² based on acreage, the penalties do not apply to wheat which is stored and thereby insulated from the market. Wheat not thus insulated can be thrown on the market, and whether it is ultimately marketed or consumed on the farm, it becomes an integral part of the national supply available and actually used for all purposes. This supply and its use has a substantial effect on the interstate price, irrespective of the quantity finally marketed.

¹¹ See also *Standard Oil Co. (Indiana) v. United States*, 283 U. S. 163, 169; *Coronado Co. v. U. M. Workers*, 268 U. S. 295; *United States v. Patten*, 226 U. S. 525; *Swift and Company v. United States*, 196 U. S. 375, 397; *United States v. Trenton Potteries*, 273 U. S. 392.

¹² Farmers cannot tell at the time of planting how great a quantity of any crop will be produced. Thus they cannot make the amount grown conform to a farm marketing quota fixed in terms of bushels or pounds without regard to acreage planted. This difficulty disappears if such quota is at least, the amount of wheat produced on an acreage allotment.

We submit that, because of the relationship of all wheat available for marketing to price and the position of such wheat as an integral part of the national supply available for use on or off the farm, Congress reasonably concluded that the beneficial purposes of the statute could best be achieved if the quota system applied to all wheat available for marketing and not merely to that which was actually sold.

In addition, administrative problems arising out of the manner in which wheat is marketed require the inclusion of wheat used on the farm within the wheat marketing quota regulation.

As has been pointed out, wheat, as distinguished from tobacco, is marketed by over a million farmers through almost innumerable outlets. "From the time wheat leaves the producer it usually cannot be traced as an individual shipment into the principal market channels" (R. 49). "This diversified disposition of the farm production of wheat and the various methods of marketing make it difficult accurately to account for the actual amount, as well as the final disposition, of an individual farmer's wheat production" (R. 50). As a consequence, enforcement of marketing quotas would be extremely difficult if dependent upon the ability of the Government to trace every sale by all farmers subject to the law.

If the quota system applied only to wheat actually sold and not also to the amount used on the

farm, the enforcing agency would have to know the total quantity disposed of by each farmer through all of the possible outlets in order to determine whether he was complying. To obtain such information it would be necessary to check every farm or business outlet. With more than a million farmers and thousands of marketing outlets to police in this fashion, the resulting administrative task would be well nigh impossible.

The type of regulation provided in the present Act obviates this difficulty. All that need be known is the acreage planted by the farmer and the normal yield per acre, figures which are commonly known to or easily ascertainable by the local committee or the agents of the Department.¹³ If a producer plants excess acreage, the normal yield of that acreage constitutes the excess over his quota, unless he proves the actual yield of such acreage to have been less, in which case the latter figure prevails.¹⁴ Penalties are to be paid on all of the excess not stored or delivered to the Secretary, and the farmer can market none of his wheat until such penalties are paid.

The importance of these administrative considerations and the necessity for this particular means of regulation appear from the manner in which

¹³ The number of acres planted can be determined by measurement of the farm at any time during the growing season.

¹⁴ The amendment of December 26, 1941, added a provision immaterial in this case. See p. 8, n. 2, *supra*.

Congress has altered the statutory scheme in order to make it workable. Under the original Act of 1938 the individual farm marketing quota was based on the normal production of a stated percentage of the allotted acreage, and the penalty applied to all wheat sold in excess of this quota. Enforcement of this plan would have required the policing of all wheat producers or their marketing outlets to be certain that they did not sell more than their quotas without paying the penalty.

The amendment of July 26, 1939, fixed the individual producer's marketing quota at the actual or normal production of the allotted acreage, whichever was greater, and penalized the marketing of any excess. This would have facilitated enforcement since all producers who planted only their allotted acreage would have had no excess. It would have been necessary under this provision, however, to determine the actual production of each farmer who planted excess acreage in order to ascertain his marketing quota; and it still would have been necessary to police all producers who planted excess acreage or their marketing outlets in order to prevent them from marketing wheat produced from the excess acres without paying the penalty. This likewise was not feasible.

The difficulty was finally eliminated by the amendment of May 26, 1941. Under these provisions the marketing quotas and penalties can be readily enforced. For reasons previously stated,

supra, pp. 46-47, the excess wheat of each producer which is available for marketing can be easily ascertained, and there is no necessity for seeking to determine the amount which a producer actually markets.

That an object of the May 1941 amendment was to facilitate enforcement of the quota system appears clearly from the reports of both the House and Senate Committees. Senate Report No. 143, 77th-Cong., 1st Sess., states:

After considering the regulations which will be needed in the administration of the corn and wheat-marketing quota programs for the 1941-42 marketing year in the event that quotas become effective for that year, the Department of Agriculture has advised this committee that the enforcement of the present provisions of the Agricultural Adjustment Act of 1938 will be extremely difficult. Under the present provisions of the act, the farm-marketing quota for corn or wheat is the actual production or the normal production, whichever is the larger, of the farm acreage allotment. It will be almost impossible to determine the actual production of corn or wheat produced on a farm, particularly where the producer is not participating in the farm program. The problem is also complicated by the fact that the marketing of corn or wheat as defined in the act includes the feeding to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, or are to be so

disposed of. The proposed joint resolution (S. J. Res. 60) is designed to simplify the administration of marketing quotas on corn and wheat and to enable farmers to make the quotas more effective in accomplishing the purpose of the act.

* * * * *

The redefining of the farm-marketing quota is for the purpose of eliminating the necessity of determining the actual production of wheat or corn on each farm.

* * * * *

The resolution in effect provides for the determination of a farm-marketing excess and puts the penalty on this excess of the commodity regardless of whether it is actually marketed, thereby making unnecessary the determination of the actual production of the commodity on the farm.

House Report No. 364, 77th Cong., 1st Sess., states:

It has become apparent that certain changes are needed in the farm marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, relating to corn and wheat, if marketing quotas should become effective for those commodities for the 1941-42 marketing year. The proposed resolution is designed to simplify the administration of marketing quota programs on corn and wheat and to enable farmers to make the quotas more effective in accomplishing the purposes of the act.

* * * * *

The resolution, in effect, provides for the determination of a farm marketing excess on corn and wheat and puts the marketing penalty on this excess of the commodity, regardless of whether it is actually marketed, thereby making unnecessary the determination of the actual production and the actual marketings of the commodity on the farm.

These explanations of the changes in the statute demonstrate that the May 1941 amendment was designed to insure the enforceability of the original plan to keep an excessive quantity of wheat out of the channels of commerce, not to convert the statute from a regulation of marketing to one of production.

It has repeatedly been recognized that the Constitution allows Congress to choose the means which it deems most appropriate for the carrying out of the powers entrusted to the Federal Government. *United States v. Darby*, 312 U. S. 100, 117-121, and cases cited, and *United States v. Wrightwood Dairy Co.*, No. 744, decided February 2, 1942. Certainly Congress is not limited to the use of ineffective means or those difficult of enforcement.

"Congress, having by the present Act adopted the policy of excluding from interstate commerce" an excessive supply of wheat, "it may choose the means reasonably adapted to the attainment of the permitted end, even though they involve control of intrastate activities. Such legislation has often been sustained with respect to powers, other

than the commeree power granted to the national government, when the means chosen, although not themselves within the granted power, were nevertheless deemed appropriate aids to the accomplishment of some purpose within an admitted power of the national government. See *Jacob Ruppert, Inc. v. Caffey*, 251 U. S. 264; *Everard's Breweries v. Day*, 265 U. S. 545, 560; *Westfall v. United States*, 274 U. S. 256, 259. As to state power under the Fourteenth Amendment, compare *Otis v. Parker*, 187 U. S. 606, 609; *St. John v. New York*, 201 U. S. 633; *Purity Extract & Tonic Co. v. Lynch*, 226 U. S. 192, 201-202. A familiar like exercise of power is the regulation of intrastate transactions which are so commingled with or related to interstate commerce that all must be regulated if the interstate commerce is to be effectively controlled. *Shreveport Case*, 234 U. S. 342; *Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co.*, 257 U. S. 563; *United States v. New York Central R. Co.* [272 U. S. 457], 464; *Currin v. Wallace*, 306 U. S. 1; *Mulford v. Smith*, *supra*. Similarly Congress may require inspection and preventive treatment of all cattle in a disease infected area in order to prevent shipment in interstate commerce of some of the cattle without the treatment. *Thornton v. United States*, 271 U. S. 414. * * * Congress in the exercise of its power to require inspection and grading of tobacco shipped in interstate commeree may compel such inspection and grading of all tobacco

sold at local auction rooms from which a substantial part but not all of the tobacco sold is shipped in interstate commerce. *Curriu v. Wallace, supra*, 11, and see to the like effect *United States v. Rock Royal Co-op., supra*, 568, note 37." *United States v. Darby*, 312 U. S. 100, 121-122.

The Court has even more recently indicated that Congress may subject the entire process of manufacturing renovated butter to federal supervision, including inspection of factories and materials, for the purpose of preventing the shipment of unwholesome butter in interstate commerce. *Cloverleaf Butter Co. v. Patterson*, No. 28, decided February 2, 1942.

In *Mulford v. Smith*, this principle was given effect in connection with the regulation of intrastate marketing under the very statute involved in this case. But intrastate marketing stands in no better position than other intrastate conduct, insofar as the exercise of the commerce power is concerned. In the *Mulford* case the regulation of intrastate sales was upheld, not because such sales constituted marketing but rather because such regulation was necessary to accomplish the valid object of the act in regulating the quantity to flow in interstate commerce. The same principle applies here. The penalty upon all excess wheat available for marketing, no matter to what use it may be put, is necessary to the effective regulation of interstate commerce.

III

THE ACTION MAY NOT BE MAINTAINED AGAINST THE
APPELLANTS WHO ARE MEMBERS OF THE COUNTY AND
STATE COMMITTEES

In addition to the Secretary of Agriculture, the individuals composing the County Agricultural Conservation Committee for Montgomery County, Ohio, and another individual, Dale Williams, alleged to be the Chairman of the State Agricultural Conservation Committee for Ohio (hereinafter referred to as "committee members") were made defendants in this suit. They filed a motion to dismiss the complaint on the ground, among others, that they have no power or authority, either as individuals or as members of the county and state agricultural conservation committees, to enforce the wheat marketing quota provisions of the Act or to require the appellee to do or to refrain from doing anything whatsoever (R. 10). The court below overruled the motion (R. 103). We submit that this ruling was plainly erroneous.¹⁵

¹⁵ Inasmuch as the Secretary is a party to this suit, the ruling on the motion is of no practical significance in this case alone. However, over thirty cases have been filed by producers against local county committees and are now pending in various districts. In most of these cases the Secretary of Agriculture is not named as a defendant. In those cases where the Secretary has been named as a defendant, he has either been dismissed for lack of proper venue or has pending a motion for such dismissal. The question is, therefore, of considerable importance not only to the Government but to the courts where these cases are pending. Furthermore, the point is the sole question presented in *Beckman v. Mall*, D. Kan., decided April 2, 1942, appeal to this Court allowed April 6, 1942.

It is axiomatic that a court of equity has no jurisdiction to grant injunctive relief against persons who are powerless to injure the complainant. A cursory examination of the powers and duties of the committee members reveals that nothing which they could do under the Act and the regulations issued pursuant thereto could affect the appellee if he chose to disregard the regulatory scheme. Section 388 (a) of the Act authorizes the Secretary to avail himself of the services of such agencies. The Act and the regulations issued by the Secretary of Agriculture¹⁶ authorize the committee members: (a) To assemble accurate information with respect to wheat farms in Montgomery County, Ohio; (b) to make, on the basis of such data, certain computations in accordance with regulations issued by the Secretary of Agriculture; (c) to determine initially, in accordance with regulations issued by the Secretary, and to notify producers of, the acreage allotments, normal yields and farm marketing quotas established under the Act; (d) to issue the prescribed marketing cards in accordance with regulations issued by the Secretary of Agriculture; and (e) to receive moneys tendered to them in payment of penalties incurred under the statute, and to remit such moneys to the Secretary.

It is obvious that the committee members perform purely administrative functions and have

¹⁶ "Wheat—507. Regulations Pertaining to Wheat Marketing Quotas for the 1941 Crop of Wheat." 6 Fed. Reg. 2695-2705, 3465-3467, 4626.

nothing to do with the enforcement of the statute. Any penalty against the appellee for failure to comply must be enforced by the Attorney General and the District Attorneys on request of the Secretary of Agriculture. Section 376 of the Act provides in part: *

If and when the Secretary shall so request, it shall be the duty of the several District Attorneys in their respective Districts, under the direction of the Attorney General, to institute proceedings to collect the penalties provided in this title.

In view of the inability of the committee members to enforce the scheme of regulation, it is immaterial whether they be considered as an independent agency aiding in the administration of the statute or as subordinates of the Secretary, who alone has some part in the enforcement of the Act. If they are regarded as having the status of an independent agency, this case is governed by the decision in *Federal Trade Commission v. Claire Furnace Co.*, 274 U. S. 160, in which this Court held that no suit for injunction would lie against the Federal Trade Commission to prohibit it from ordering a corporation to submit reports because such orders were only enforceable by the Attorney General. See also *California v. Latimer*, 305 U. S. 255, 260-261. On the other hand, if the committee members are to be regarded as subordinates of the Secretary, the Secretary must, as is true in this

case, be a party to the suit (see *Gnerich v. Rutter*, 265 U. S. 388, and *Webster v. Fall*, 266 U. S. 507), and these subordinates, as well as all other subordinates who have no share in the Secretary's enforcement duties, would not be proper additional parties." In either event the suit should have been dismissed against the committee members.

In two recent cases arising under this statute district courts have sustained motions to dismiss filed on behalf of persons having the same status as the committee members. *Hawthorne v. Fisher*, 33 F. Supp. 891 (D. C. N. D. Tex.); *Beckman v. Mall*, D. Kansas, decided April 2, 1942, appeal to this Court allowed April 6, 1942. In the latter case Circuit Judge Phillips, speaking for the majority of the court, said:

It now appears, and it seems to me, that the only authority that a local committee has with respect to penalty is to receive the amount of the penalty if tendered by a wheat farmer, and remit it to the state committee which in turn will remit it to the Treasury or, in the event a penalty is not paid, to report the fact that a penalty has been incurred and that it has not been paid to the Secretary of Agriculture, in order that the Secretary of Agriculture may take steps if

¹¹ We do not believe that the decision in *Colorado v. Toll*, 268 U. S. 228, is contrary to this proposition. From the report it appears that in that case the subordinate who was held subject to suit even in the absence of his superior had power to enforce the regulations by affirmative action.

he be so advised to bring legal proceedings to enforce the payment of the penalty. That duty is vested in the local committee under section 711 of the regulations pertaining to wheat marketing quotas for the 1941 crop of wheat, issued May 31st, 1941, entitled or designated as "Wheat—507." So far as the proof shows the local committees are not taking any affirmative steps to enforce the penalties or otherwise taking any affirmative action against the nonpaying wheat farmer against whom the penalty has been found to exist, and that there is no relief that the Court can grant against the local committees, I mean state, county and township committees, that will avail the plaintiffs anything in this case.

The same ruling has been repeatedly made in cases brought against subordinate agencies set up to assist the Secretary of Agriculture in the administration of the Agricultural Marketing Agreement Act of 1937, and its antecedent the Agricultural Adjustment Act of 1933.¹⁸

Appellee's attempt to maintain this suit against the committee members is not strengthened by his prayer for a declaratory judgment. Such relief would be inappropriate as against the committee

¹⁸ *Yarnell v. Hillsborough Packing Co.*, 70 F. (2d) 435 (C. C. A. 5); *Massachusetts Farmers Defense Committee v. United States*, 26 F. Supp. 941 (D. C. D. Mass.); *Beranek v. Wallace*, 25 F. Supp. 841 (D. C. N. D. Ind.); *United States v. Western Fruit Growers*, 34 F. Supp. 794 (D. C. S. D. Calif.).

members because they have no "adverse legal interests" with respect to the appellee and there can be no "actual controversy" between the appellee and the committee members. A declaratory judgment can only be granted in a case where it is conceivable that the parties may be reversed and the existing defendant may become a plaintiff against the existing plaintiff as a defendant." Such a situation can never arise here because the committee members have no authority to institute any action for enforcement of the statute against the appellee.

The fact that the Secretary has elected to defend the case on the merits does not affect the right of the committee members to be dismissed. His presence in the case does not give rise to any additional case or controversy between appellee and the committee members. They are neither necessary nor proper parties under the Federal Rules of Civil Procedure and they would not have been such under the former equity rules. They are clearly not persons "who ought to be parties if complete relief is to be accorded between those already parties." See Federal Rules of Civil Procedure, Rule 19 (b). The injunction granted against the Secretary by the lower court, if sustained, affords full relief to the appellee. To include in such

¹⁹ *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 324; *Aetna Life Ins. Co. v. Haworth*, 300 U. S. 227, 239-241; *Muskat v. United States*, 219 U. S. 346, 357, 359; Cf. *Nashville C. & St. L. Ry. v. Wallace*, 288 U. S. 249, 261.

injunction these committee members, who clearly have no power to do the things enjoined, is manifestly unnecessary, improper, and without foundation in law or in equity.

CONCLUSION

For the above reasons, it is respectfully submitted that the judgment of the court below should be reversed and the complaint dismissed.

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APRIL 1942.

APPENDIX

Information for the Press

Release—Immediate.

UNITED STATES DEPARTMENT OF AGRICULTURE,
Washington, D. C., May 27, 1941.

U. S. D. A. GEARING WHEAT PROGRAM TO COMPLY WITH S. J. RES. 60

The Department of Agriculture announced today that the 1941 A. A. A. wheat program is being geared to comply with provisions of Senate Joint Resolution No. 60, signed today by President Roosevelt. The new legislation affects all of the five basic commodities. It applies immediately to wheat as a result of the recent wheat marketing quota proclamation and the wheat quota referendum set for May 31.

Under the new legislation, 1941 commodity loan rates for wheat, cotton, corn, rice, and tobacco will average 85 percent of parity. The parity price of wheat was \$1.14 on April 15. The terminal and country loan rates for wheat will be announced in a few days. The wheat loan, which will average 85 percent of parity, cannot be offered if wheat growers reject marketing quotas in their referendum May 31. Loan rates for the other basic crops will be announced later.

S. J. Res. 60 also makes these major changes in the marketing quota provisions of the Agricultural

Adjustment Act: (1) exempts from quotas all corn or wheat farms on which the acreage planted to the commodity is 15 acres or less; (2) places the marketing quota penalty at 50 percent of the basic loan rate offered cooperators; (3) makes the entire crop on farms that have a marketing excess subject to an automatic Government lien until the excess has been taken care of; and (4) defines the corn and wheat marketing quota for a farm as the actual production of the acreage of the commodity on the farm less the normal or actual production, whichever is smaller, of the acreage planted to the commodity in excess of the farm acreage allotment.

As under previous legislation, the loans that will be offered in accordance with the resolution are dependent upon approval in a referendum on marketing quotas in cases where a quota is proclaimed. Cotton and tobacco farmers have already approved quotas for the current crop and no quotas will be proclaimed for either of the corn or rice crops in 1941. Wheat farmers will vote May 31 on whether or not quotas will be applied to this year's crop.

Under the wheat marketing quota provisions as now amended, all farmers except those who have 15 acres or less of wheat or whose normal production on the acreage planted to wheat is less than 200 bushels will be subject to the quota and will be eligible to vote in the May 31 referendum.

All persons who are entitled to share in the proceeds of the 1941 wheat crop on such a farm as owner, landlord, tenant, or sharecropper are eligible to vote, but no individual, partnership, corporation, association, or other legal entity is entitled to more than one vote, even though engaged in produc-

tion of wheat on two or more farms, or in two or more communities, counties, or States.

Arrangements are being made by A. A. A. committees for holding the referendum May 31 in every wheat-growing community in the United States. Three resident wheat farmers appointed by the local county A. A. A. committee will be in charge of each polling place where eligible wheat farmers will have the opportunity of casting a secret ballot.

An eligible farmer who is unable to visit the polling place in the county where his farm is located may obtain a ballot from any county A. A. A. committee and may cast his ballot by signing his name to the ballot and mailing it to the A. A. A. committee in the county in which his farm is located. Any such ballot voted by mail must reach its destination by 8:30 a. m., Monday, June 2. No voting by proxy or agent is permitted.

If the quota is approved in the referendum, all farmers may continue to sell or feed all they produce on their acreage allotment plus any old wheat carried over from previous crops. Only the normal or actual production, whichever is less, of the acreage in excess of the farm allotment is subject to penalty.

The farmer who has such a marketing excess may dispose of it in one of three ways: (1) he may market it and pay the penalty, which is 50 percent of the basic loan rate, (2) he may deliver it to the Secretary of Agriculture through his local A. A. A. committee, and (3) he may store it under bond.

If the wheat is sealed in storage approved for Government loans he will be eligible for a loan on it at 60 percent of the regular loan rate. Wheat delivered to the Secretary will become the property

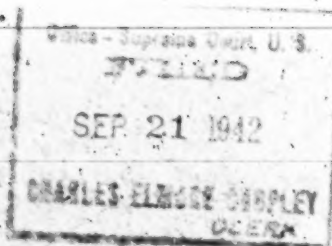
of the Government and will be used for relief and other purposes that will divert it from the normal channels of trade.

"This action by Congress and the President," Secretary of Agriculture Claude R. Wickard said in commenting on the new amendments, "further strengthens a program that, taking wheat as an example, has enabled farmers for three years to maintain their return well above the world level, and that for 1941 can assure wheat farmers a larger income than they have received from any crop in 14 years.

"As a result of the legislation farmers will find the wheat quota provisions more effective and workable. The combination of the quota, acreage allotment, and the higher loan rate is most important now to the wheat farmer as he feels more and more the effects of a world at war. With this program he is better prepared to protect his income from the weight of a big surplus while at the same time holding adequate reserves in safe storage.

"As has been Farm Program policy since 1933, application of the program remains in the farmers' hands, and because of the importance of the decision I call upon all farmers who would be affected by the quota to vote at their community polls on May 31."

FILE COPY



No. 59

In the Supreme Court of the United States

OCTOBER TERM, 1942

**CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE
OF THE UNITED STATES, ET AL., APPELLANTS**

v.

ROSCOE C. FILBURN

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF OHIO**

BRIEF FOR THE APPELLANTS ON REARGUMENT

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 59

**CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE
OF THE UNITED STATES, ET AL., APPELLANTS**

v.

ROSCOE C. FILBURN

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF OHIO**

BRIEF FOR THE APPELLANTS ON REARGUMENT

This Court has ordered reargument—

limited to the question whether the Act, insofar as it deals with wheat consumed on the farm of the producer, is within the power of Congress to regulate commerce.

The wheat marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, do not regulate the consumption of wheat on the farm. Those provisions, through the establishment of quotas (sufficient in the aggregate to meet 130 percent of the estimated national demand) for all wheat before it is used for any purpose and the

requirement that wheat in excess of quotas be stored if penalties are to be avoided,¹ determine how much of the national supply of wheat is available interchangeably for marketing and other purposes to fill the total demand. The question which we feel to be presented, therefore, is not whether Congress can regulate consumption on the farm, but whether, as a means of regulating the amount of wheat marketed and the interstate price structure, Congress has the power to control the total available supply of wheat, including, of course, that which is consumed on the farm.

ARGUMENT

THE WHEAT PROVISIONS OF THE AGRICULTURAL ADJUSTMENT ACT ARE A VALID EXERCISE OF THE FEDERAL COMMERCE POWER

Factual background.—The purpose of the Agricultural Adjustment Act of 1938 (52 Stat. 31), as revealed in Sections 2 and 331 (7 U. S. C., Secs. 1282, 1331), was to insure a "balanced flow" of basic agricultural commodities in interstate and foreign commerce, with accompanying fair prices to the farmer and consumer. Excessive and deficient supplies in such commodi-

¹ Appellee's brief at the last Term stated that (p. 9): "Wheat farmers, under the provisions of the Act as amended on May 26, 1941, are denied the privilege of storing their wheat, any part of it, without paying the penalty of 49 cents a bushel on all of the excess production." This is incorrect. Paragraph (3) of the amendment of May 26, 1941, 55 Stat. 203, 7, U. S. C. (Supp. I) Sec. 1340 (3), provides expressly that penalties shall be paid only "upon failure to store or deliver to the Secretary."

ties—corn, wheat, cotton, tobacco, and rice²—are declared to affect both the orderly marketing and the price of the commodities in interstate commerce. The Act is a preventive measure designed to “minimize recurring surpluses and shortages of wheat in interstate and foreign commerce” (Section 331) by maintaining adequate reserve supplies and providing for an adequate flow of wheat and wheat products.

The accuracy of these legislative findings cannot be seriously questioned. The corroborative facts are summarized at pp. 12-18 of the Government's brief at the original argument. The record shows that wheat is a vital and important subject of interstate commerce (R. 49-66), and that an excessive supply, “made up of production and carry-over,” forces prices down (R. 67) and may congest transportation facilities so as to require the establishment of embargoes on interstate shipments (R. 51). The large world surplus for 1941 resulted in a price upon the world market of approximately 40¢ per bushel, as contrasted with a return of \$1.16 for farmers in this country co-operating in the wheat program (R. 71).

Approximately 78 percent of the wheat grown in 1940 was sold (R. 53). The remainder was used as seed or feed on the farm, or ground at mills or exchanged for flour for farm household consumption. The amount of wheat used for seed in recent

² Peanuts were included by subsequent amendment (55 Stat. 88, 7 U. S. C. (Supp. I), Secs. 1357, 1359).

years has ranged from a low of 73 million bushels in 1939-1940 to a high of 97 million bushels in 1936-1937 (R. 68). Most of this is grown on the farm where used but a substantial amount is purchased on the market. Between 1935-1936 and 1940-1941 the amount purchased for seed ranged from 8,636,000 bushels to 24,623,000 bushels and has averaged something over 13 million bushels.³ The amount of wheat consumed as livestock feed on the farm where grown has ranged from 28 million bushels in 1925-1926 to 174 million in 1931-1932 (R. 68). But in addition, substantial quantities of wheat are purchased commercially for feed; the amount has varied from a low of 11,466,000 bushels in 1940-1941 to a high of 35,417,000 in 1938-1939, the average for the last six years being about 22 million bushels.⁴ The amount consumed as food by persons on the farm where grown has in recent years stayed consistently between 11 and 16 million bushels.⁵ The total amount used as food in the United States has, since 1930-1931, ranged from 450 to 494 million bushels.⁶ The wheat consumed by farmers as seed, feed, and food is thus drawn both

³ These figures are obtained, partly by computation, from tables published in *The Wheat Situation* (Bureau of Agricultural Economics, Department of Agriculture), February 1942, p. 11; id., May 1942, p. 13. See also United States Department of Agriculture, *Agricultural Statistics*, 1941, p. 20.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

from their own farms and from the commercial markets.

It is further important to note that, as set forth in the stipulation of facts (R. 50), the "diversified disposition of the farm production of wheat and the various methods of marketing make it difficult accurately to account for the actual amount, as well as the final disposition, of an individual farmer's wheat production."

Legislative background.—The original 1938 Act provided for the imposition of marketing quotas in years of excessive total supply, the total supply being the amount available for market, including both the carry-over and the estimated production. Section 301 (b) (16) (A) (B). For all of the commodities except corn, the quota system was applied only to products actually marketed. As to corn, it was recognized from the beginning that since almost eighty-five percent of the field corn grown in the commercial corn-producing states moved into commerce in the form of livestock or livestock products (H. Rep. No. 1645, 75th Cong., 2d Sess., p. 24), any attempt to control the marketing of corn would have to include the amount which was marketed as an "ingredient" of poultry and livestock which, or the products of which, were marketed. Section 301 (b) (6) (B), 52 Stat. 40.

Quotas first became operative for tobacco and cotton. Since these crops are produced only for market, and, being neither seed nor food, are not consumed on the farm, the establishing of quotas

for marketing alone sufficed to control the entire supplies of these commodities. Moreover, these commodities proceed to market through a relatively small number of outlets, the tobacco warehouse and the cotton gin, with the result that it is not too difficult to keep track of the disposition of the entire supply through a regulation the incidence of which falls at the time of marketing.

It soon became apparent that wheat and corn should be treated "alike with respect to the feeding of poultry or livestock for market" (S. Rep. No. 1668, 76th Cong., 3d Sess., p. 2), even though, of course, a far greater proportion of corn than of wheat is used for such purposes. The definition of marketing for wheat was accordingly amended to correspond to that for corn. 54 Stat. 727, amending Section 301 (b) (6). Although the program was still regarded and described by Congress as one for the establishment of marketing quotas, the economic inseparability of corn, wheat, and livestock thus resulted in provision for quotas which applied to corn and wheat consumed by livestock on the farm as well as that sold.

This amendment of the definition of marketing brought within the quota system a substantial por-

¹ This interrelationship is demonstrated by the latest Department of Agriculture Appropriation Act (Pub. No. 674, 77th Cong., 2d Sess., approved July 22, 1942), which provides (p. 34) "that not more than one hundred and twenty-five million bushels of wheat may be sold for feeding purposes" and "that no grain [including wheat] shall be sold for feed at a price less than 85 per centum of the parity price of *corn* at the time such sale is made." (Italics supplied.)

tion, although not all, of the unmarketed portion of the total wheat supply. When, in 1941, it seemed that the wheat surplus would, for the first time, become large enough to require the establishment of quotas,^{*} the Department of Agriculture, with the experience gained in administering other programs, became apprehensive as to its ability to administer and enforce a program in which it was required to know not only the acreage and normal yield but the actual amount produced and marketed from each farm.^{*} In an effort to make the statute workable, Congress found it necessary to make both corn and wheat programs, like those for cotton and tobacco, apply to the entire supply. Furthermore, application of the quota system to the entire supply provided a much more effective and equitable means of attaining the basic congressional objectives,—stabilization of the interstate flow through storage of surpluses for use in time of shortage, and the maintenance of a reasonable level of prices.

The Act in its present form provides that each farmer shall store, turn over to the Secretary of Agriculture, or pay a penalty on, his "farm marketing excess"—an amount consisting of the normal production, or the actual production *if the producer shows it to be less*, of the acreage in

^{*} The yearly supply of corn since the Act was passed has not been such as to bring quotas into effect.

^{*} The practical difficulties are described in greater detail, *infra*, pp. 31-37.

excess of his farm acreage allotment.¹⁰ The Act thus applies to wheat as soon as it becomes a part of the supply available for sale as well as for farm use. Although the plan is still described by Congress as one for the establishment of marketing quotas, the ineffectiveness of the original scheme as applied to a commodity a substantial portion of which is not marketed has caused the incidence of the program to move backward from the point of actual marketing to the point at which the wheat becomes available for market. The impact of the plan thus falls not merely upon the wheat sold but upon the entire supply.

The purposes of the statute, however, remained the same. We submit that Congress may seek to attain those objectives, which are plainly legitimate under the commerce clause,¹¹ by any appropriate means, and that it is immaterial whether

¹⁰ See Joint Res. of May 26, 1941, 55 Stat. 203, 7 U. S. C. (Supp. I) Sec. 1340. The amendment of December 26, 1941, 55 Stat. 872, 7 U. S. C. (Supp. I) Sec. 1340 (12) provided that the excess should in any event not be larger than the amount by which actual production on the farm "exceeds the normal production of the farm wheat-acreage allotment, if the producer establishes such actual production to the satisfaction of the Secretary."

¹¹ The "supply" and the "price" of goods entering into interstate commerce have been held to be of legitimate congressional concern. See *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 310; *Standard Oil Co. (Indiana) v. United States*, 283 U. S. 163, 169; cf. *Mulford v. Smith*, 307 U. S. 38; *Chicago Board of Trade v. Olsen*, 262 U. S. 1; *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381.

in doing so its regulation is confined to interstate and intrastate marketing¹² or is extended to cover other intrastate transactions.¹³ Congress "may choose the means reasonably adapted to the attainment of the permitted end, even though they involve control of intrastate activities." *United States v. Darby*, 312 U. S. 100, 121; *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 119; *Oklahoma v. Atkinson Co.*, 313 U. S. 508, 526.

We shall show that application of the quota system to the entire supply of wheat, including that consumed on the farm, was appropriate and

¹² The original marketing quota system for wheat, like that for tobacco, applied to products marketed both interstate and intrastate. The intrastate marketing of tobacco was held subject to federal regulation because of the need for making the regulation of that sold interstate effective. *Mulford v. Smith*, 307 U. S. 38, 47; *Currin v. Wallace*, 306 U. S. 1, 11.

¹³ Although the Act controls the disposition of the supply of wheat after it is produced, it does not regulate the production. It contemplates the storage of the excesses for years of drought or shortage, and thus does not penalize bringing them into existence. A farmer may grow as much as he pleases without penalty, so long as he is willing to store the excess so that it will not be available for marketing during the marketing year.

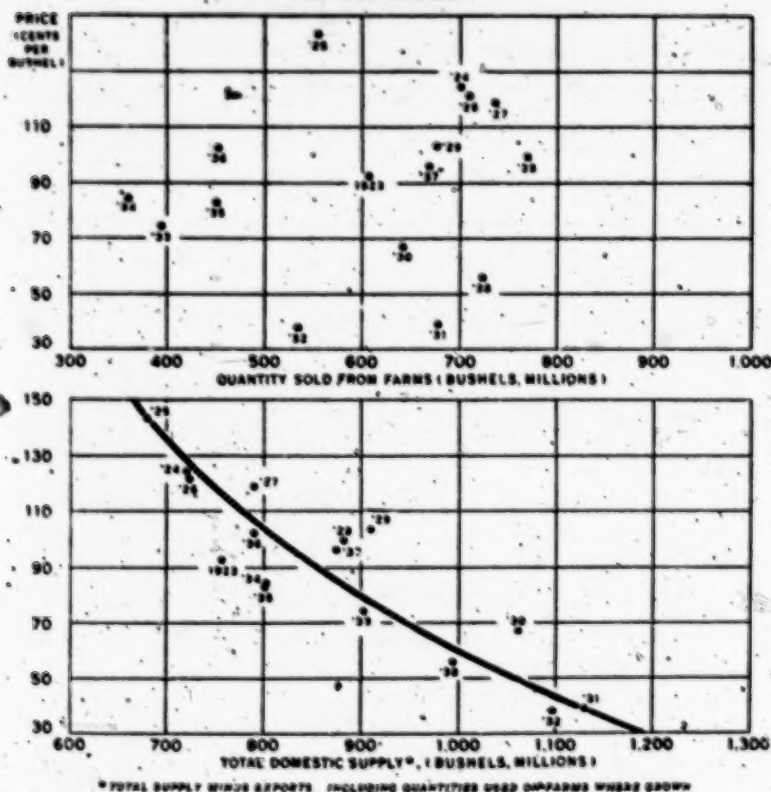
We do not wish to imply, however, that achievement of the congressional purpose through production control would be invalid. This Court has frequently recognized that production, like other intrastate activities, is subject to congressional control when appropriate to the effective regulation of interstate commerce. *E. g.*, *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1; *United States v. Darby*, 312 U. S. 100, 121; *Cloverleaf Co. v. Patterson*, 315 U. S. 148.

reasonably adapted to the accomplishment of the congressional objectives for the following reasons: (1) the interstate price structure is substantially and directly affected by the total supply available for marketing, and not merely by the amount which is marketed; (2) the total supply is an integrated whole available for all uses, and the amount consumed on the farm is not economically separable; and (3) a fair system of allocation based upon the quantity of wheat marketed would be ineffective, because of unavoidable difficulties in administration and enforcement. Any one of these reasons, and certainly any or all of them in combination, is sufficient to make the plan adopted a valid exercise of the federal commerce power.

1. *The effect of the supply upon the interstate price structure.*—A primary object of Congress in enacting the Agricultural Adjustment Act was to keep an excessive supply of a crop from forcing down prices to levels ruinous to the farmer. As the record shows (R. 67), the price of wheat is directly affected by the supply. And the supply which affects the price is not the amount which happens to be sold, but the total quantity which can be—even if it is not—thrown upon the market. The supply which is significant, in so far as the workings of the law of supply and demand are concerned, is thus the total supply, consisting of the amount harvested in each year

plus the carry-over from prior years (R. 67). Indeed, it is precisely when the supply exceeds the demand¹⁴ and hence will not all be sold, that prices are depressed.

WHEAT: PRICE RECEIVED BY FARMERS RELATED TO QUANTITY SOLD FROM FARMS AND TO TOTAL DOMESTIC SUPPLY: UNITED STATES, 1923-38
(YEAR BEGINNING JULY.)



* TOTAL SUPPLY MINUS EXPORTS INCLUDING QUANTITIES USED ON FARMS WHERE GROWN

U. S. DEPARTMENT OF AGRICULTURE

WRS. 42999 BUREAU OF AGRICULTURAL ECONOMICS

The operation of this basic economic principle upon the marketing of wheat clearly appears from

¹⁴ The relatively inelastic demand for wheat for flour is not responsive to the price (R. 68), and thus will not grow sufficiently to consume the supply as prices go down.

the accompanying graphs.¹⁵ The upper chart shows that there is no correlation at all between farm prices and the amount of wheat sold. In contrast, the lower chart demonstrates the definite relationship between farm prices and the total domestic supply; as the supply goes up prices go down.

Although in the long run the price helps to determine the supply, in any single year the supply reacts upon the price, since the crop is planted before the price is known. The demand for wheat is relatively inelastic (R. 68). Accordingly, the price is largely determined by the total supply available for all purposes, including the amount which is ultimately consumed on the farm.

The total supply available for marketing rather than the amount actually marketed by the farmers

¹⁵ These graphs are prepared from statistics published in United States Department of Agriculture, *Agricultural Statistics*, 1941, pp. 10, 20, 22. The figures as to farm prices are also found at R. 81, and the figures for total domestic supply may be computed from R. 79-80. The table upon which the graphs are based is as follows:

| Year beginning July— | Price received by farmers | Quantity sold from farms | Total domestic supply* | Year beginning July— | Price received by farmers | Quantity sold from farms | Total domestic supply* |
|----------------------------|------------------------------------|-----------------------------------|------------------------------|----------------------------|------------------------------------|-----------------------------------|------------------------------|
| | Cents per bushel | Million bushels | Million bushels | | Cents per bushel | Million bushels | Million bushels |
| 1923 | 92.6 | 607 | 757 | 1931 | 39.0 | 679 | 1,129 |
| 1924 | 124.7 | 700 | 721 | 1932 | 38.2 | 536 | 1,097 |
| 1925 | 143.7 | 556 | 682 | 1933 | 74.4 | 395 | 902 |
| 1926 | 121.7 | 708 | 724 | 1934 | 84.8 | 361 | 803 |
| 1927 | 119.0 | 737 | 791 | 1935 | 83.2 | 452 | 801 |
| 1928 | 90.8 | 779 | 883 | 1936 | 102.6 | 453 | 791 |
| 1929 | 103.6 | 677 | 909 | 1937 | 96.3 | 668 | 876 |
| 1930 | 67.1 | 541 | 1,061 | 1938 | 56.1 | 724 | 994 |

*Total supply minus exports. Including quantities used on farms where grown.

thus has a direct and important, if not indeed a controlling, effect upon the price structure. Since the prices affected are predominantly interstate, it follows that the supply directly and substantially affects interstate commerce.

This Court has held that the prices of commodities which move across state lines are an intrinsic part of interstate commerce, and that the direct regulation of such prices is a regulation of interstate commerce itself. *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381, 393-394; *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533; cf. *Chicago Board of Trade v. Olsen*, 262 U. S. 1, 40. Congress unquestionably has the power to control such prices directly so that they will not be too low (*United States v. Rock Royal Co-operative, Inc.*, *supra*; *Sunshine Anthracite Coal Co. v. Adkins*, *supra*) or too high (Interstate Commerce Act, Sec. 15; *Tagg Bros. & Moorhead v. United States*, 280 U. S. 420; cf. *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U. S. 575). But this power is not limited to the fixing of interstate rates and prices. It extends to the control of practices which affect such prices. Indeed, outside of the Interstate Commerce Act, federal legislation in this field long consisted almost entirely of statutes designed to control practices affecting prices rather than prices themselves.

The Sherman Act is, of course, the outstanding example. Under that statute combinations or contracts which restrain trade by controlling interstate prices are unlawful. *United States v. Trenton Potteries Co.*, 273 U. S. 392; *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150. Whether the object of the combination is to raise prices, as is usually the case, or to stabilize prices, or to lower prices (as in purchasing from farmers) is of no consequence. *United States v. Socony-Vacuum Oil Co.*, *supra*; *Swift & Co. v. United States*, 196 U. S. 375.* And it has long been established that it is entirely immaterial whether the particular conduct which affects the interstate price is itself interstate or intrastate. *United States v. Patten*, 226 U. S. 525 (corner on New York Cotton Exchange); *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295 (coal strike with the object of affecting interstate wages and prices); *Standard Oil Co. (Indiana) v. United States*, 283 U. S. 163, 169 (agreement concerning manufacture tending to fix prices); *Swift & Co. v. United States*, 196 U. S. 375; *Local 167 v. United States*, 291 U. S. 293, 297. "It is the 'effect upon interstate commerce,' not 'the source of the injury,' which is 'the criterion of congressional power.'" *Schechter Poultry Corp. v. United States*, 295 U. S. 495, 544; *Second Employers Liability Cases*, 223 U. S. 1, 51; *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 121. The power "to foster, protect, control, and

restrain' * * * may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it'." *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37; *Texas & New Orleans R. Co. v. Brotherhood of Railway Clerks*, 281 U. S. 548, 570; *Second Employers Liability Cases*, *supra*, at 47, 51. The nexus between interstate and intrastate may be "economic" as well as "physical." *Federal Trade Commission v. Bunte Bros.*, 312 U. S. 349, 358 (dissent); *United States v. Wrightwood Dairy*, *supra*.

Certainly if Congress may prohibit the producers of a commodity from restricting the supply in order to raise interstate prices when such an increase is harmful, it must have power to compel them to do so when a price increase will be beneficial. Cf. *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381, 396. The relationship of the subject regulated to commerce is the same in each case; whether lower or higher prices are to be the goal is a matter for the legislature to decide. Cf. *Nebbia v. New York*, 291 U. S. 502, 537.

Closely in point are the cases in which this Court has sustained the validity of the Packers and Stockyards and Grain Futures Acts, both of which affirmatively regulated intrastate practices affecting the interstate price structure of agricultural commodities. *Stafford v. Wallace*, 258 U. S. 495; *Chicago Board of Trade v. Olsen*, 262

U. S. 1. The *Olsen* case is particularly pertinent here, both because it involved an act the object of which was to protect wheat prices against the harmful effects of speculative manipulations and because the transactions actually regulated were plainly intrastate. The Grain Futures Act regulated contracts for sales of grain for future delivery, most of which, this Court said (p. 36), "do not result in actual delivery but are settled by offsetting them with other contracts of the same kind." Most of the sales did not relate to wheat actually moving in commerce.¹⁶ They were between buyers and sellers on the floor of the Chicago Board of Trade.¹⁷ Nevertheless, they affected the price at which grain moving in commerce was sold throughout the country. Thus the question was not one of regulating the movement or the sale of a commodity in interstate commerce, but of regulating purely local activity which Congress had found affected the price of commodities moving in interstate commerce and caused price fluctuations which burdened and obstructed interstate commerce.

¹⁶ The record in the case at bar shows that over a ten-year period the volume of trade in wheat futures averaged approximately twelve times the number of bushels produced (R. 53, 44-45, 62).

¹⁷ Such contracts are between members of the exchange as principals. See *Dickson v. Uhlmann Grain Co.*, 288 U. S. 188, 192-193.

This Court sustained the regulation, declaring (pp. 39-40):

* * * Manipulations of grain futures for speculative profit * * * exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and discourage not only * * * justifiable hedging but disturb the normal flow of actual consignments. * * *

* * * If a corner and the enhancement of prices produced by buying futures directly burden interstate commerce in the article whose price is enhanced, it would seem to follow that manipulations of futures which unduly depress prices of grain in interstate commerce and directly influence consignment in that commerce are squally direct. The question of price dominates trade between the States. *Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it.* * * * [Italics supplied.]

Certainly, if Congress can regulate intrastate sales of grain futures because of their effect upon the price of wheat, it should have the power to take cognizance of the supply of wheat which, in a much more fundamental sense, determines the price. And, since the supply which affects the price is the total supply, including both the wheat which is marketed and that which ultimately is

consumed on the farm, the total supply may be taken into consideration in framing federal regulation.

2. The economic relationship between wheat consumed on the farm and wheat marketed.—

The relationship between the manner in which wheat is consumed and the price structure is such that any exclusion from the quota system of the wheat consumed on the farm would tend to defeat the object of the statute.

The total wheat supply forms a common pool to satisfy all demands. Although some wheat is sure to be kept on the farm and some to be sold commercially, no definite amount or proportion and no particular wheat is predestined for commercial or for farm consumption. The quantity which a farmer will consume on the farm is not determined until after he has compared the price he can obtain for his wheat with the price he will have to pay for competing commercial products which will meet his requirements.

The farmers' demand for wheat is a part of the total demand, to be satisfied out of the total supply; whether he uses his own wheat or buys it commercially depends largely upon comparative prices. In general, the more wheat is consumed on the farm where grown the less will be purchased by farmers commercially. Thus, the relationship between wheat sold commercially and that consumed on the farm may be said to be essentially competitive.

Furthermore, if an excessive proportion were consumed on the farm where grown—as would be the case if only wheat actually marketed were subject to quotas—the farmers' demand for commercial wheat or wheat products would probably decline accordingly. This reduction in market demand would have substantially the same effect upon the market and the price structure as an equivalent increase in supply. As a result, if a market surplus exists, it is not likely to be substantially reduced by increasing a farmer's consumption of his own wheat.¹⁴ Wheat consumed on the farm thus could not be regarded as insulated from the market or as excluded from the supply which affects wheat prices if it were excluded from the quota system.

This can be demonstrated by considering the three ways in which wheat is consumed on the farm. The relatively small quantity of wheat used directly in the household of the producer—from 11 to 16 million bushels annually (see p. 4, *supra*)—is used by the farmer in place of bread or flour bought commercially. If wheat consumed at home were exempt from the farmer's quota, he would be tempted to increase the amount ground

¹⁴ The total quantity eaten or seeded by farmers is not likely to be increased by the existence of a surplus available for farm use only. This would not be the case to the same extent for wheat fed to livestock, if farmers were able, or were induced, to increase the total quantity of livestock, or to use wheat instead of other feeds.

into flour for home use, and the market demand for bread and flour would be reduced to that extent.¹⁹

The situation as to wheat used as seed or feed is somewhat more complex, but not essentially different. Many farmers, of course, use their own wheat for seed purposes. Others, however, purchase seed through commercial channels (see p. 4, *supra*), either because their own seed would produce an inferior quality of grain, or because weather conditions, pests, or other factors might have rendered their wheat unsuitable for seed purposes. If the quota system did not apply to wheat consumed on the farm of the producer, farmers in the latter class who could possibly do so would seed their own wheat instead of buying seed on the market. This would reduce the market demand at the expense of the farmer whose wheat would otherwise have been sold for seed.

The quantity of wheat fed to livestock on the farm is determined to a large extent by the relationship between wheat prices and the price of alternative feeds, as well as by the price of livestock (R. 68). Farmers either use their own

¹⁹ Although the amount of their own wheat eaten by farmers is quite small, it might increase to substantial proportions if all wheat farmers were induced to use their wheat in this manner as far as possible by the exemption of wheat so consumed from marketing quotas. As has been pointed out, this would not necessarily increase the total quantity of wheat eaten by farmers, but would decrease the amount purchased on the market.

wheat, corn, or other grain as feed, or purchase feed on the market. (See p. 4, *supra*.) Such feed may consist of wheat in its natural state, or bran or middlings (which are byproducts produced in grinding wheat into flour), or mixtures of wheat with other grains in commercial preparations. Since corn and wheat can both be used as feed, and since corn is the crop grown primarily for such purposes, the amount of wheat so used depends at least as much on the factors affecting the consumption of corn as on those relating solely to wheat.²⁰ In large part because of this relationship, the Agricultural Adjustment Act was amended in 1939 and 1941 so as to contain identical provisions for corn and wheat.²¹

With these qualifications, it is nevertheless true, both as to wheat and corn jointly and wheat separately, that the greater the amount used as feed on the farm, the smaller is likely to be the quantity of commercial feed sold. Here too, the failure to include within quotas wheat consumed on the farm of the producer would expand such consumption, decrease commercial demands, and leave uncontrolled the surplus on the market at which the statute was directed.

That Congress may regulate the totality of interstate and intrastate activities when they are so related that the regulation of the interstate alone

²⁰ See p. 6, *supra*.

²¹ See pp. 6-7, *supra*.

would be ineffective or when the persons subject to the interstate regulation would otherwise suffer discrimination is, of course, plainly established. This has been recognized in cases where the portions of the commodity destined for intrastate and interstate use were physically inseparable (*Currin v. Wallace*, 306 U. S. 1) or difficult to segregate (*United States v. New York Central R. R. Co.*, 272 U. S. 457, 464); where exemption of the intrastate might cause physical injury to the interstate (*Southern Ry. Co. v. United States*, 222 U. S. 20 (Safety Appliance Act)); where the exemption of the intrastate would harm those engaged in interstate transactions by depriving them of business through the force of competition (*Shreveport Case*, 234 U. S. 342; *United States v. Wrightwood Dairy Co.*, 315 U. S. 110). See also pp. 37-43, *infra*. Regulation of labor relations and working conditions for all employees of an integrated business organization producing both for interstate and intrastate commerce has been upheld because of the impracticability of separating the employees working on the products destined for intrastate distribution (*Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453; *United States v. Darby*, 312 U. S. 100, 117). And when Congress has sought to regulate an industry which is predominantly interstate, its power has been sustained even as to the intrastate aspects of the industry's activities if, unregulated, they

might impose an economic burden on the industry as a whole. Thus, *Colorado v. United States*, 271 U. S. 153, sustained the power of the Interstate Commerce Commission to authorize the abandonment of an intrastate branch line even in so far as its intrastate traffic was concerned; the financial burden of continuing the intrastate traffic was regarded as lessening the ability of the carrier to serve interstate commerce. See, also, *Railroad Commission of Wisconsin v. Chicago, B. & Q. R. R. Co.*, 257 U. S. 563; *Railroad Commission v. Southern Pacific Co.*, 264 U. S. 331; *Texas & Pacific Ry. Co. v. Gulf, Colorado and Santa Fe Ry. Co.*, 270 U. S. 266; *Florida v. United States*, 292 U. S. 1.

Many of the above cases demonstrate that the power to control the intrastate aspects of interstate industries is not limited to industries engaged in transportation. In *Stafford v. Wallace*, 258 U. S. 495, the Court declared (258 U. S., at 518-519):

The application of the commerce clause of the Constitution in the *Swift Case* was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national

protection and control. This court declined to defeat this purpose in respect of such a stream and take it out of complete national regulation *by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part.* [Italics supplied.]

In the *Stafford* case the Court upheld regulation of the stockyards because of their essential relationship to the movement of commerce in livestock. This principle cannot be regarded as limited to transactions occurring in the middle of the stream or current of commerce. This Court noted in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 36, that the metaphorical reference to the stream or flow of commerce provided a particular but not an exclusive illustration of the protective power of the Federal Government. The Labor Board cases themselves demonstrate that this power extends to transactions preceding the commencement of the interstate movement.

The present case contains many of the features which have been held sufficient to justify the regulation of related interstate and intrastate activities. When the total supply of wheat is available for both marketing and farm consumption, it is impossible to tell either how much or

which wheat is to be consumed on the farm where grown or sold. Cf. *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453. Exemption from the quota system of wheat consumed on the farm where grown would give farmers able to exercise a choice between selling their excess wheat or using it on the farm an advantage over those who regularly produce wheat for sale and have little or no use for wheat on the farm. The latter would not only be likely to bear the entire burden of the restrictive program (see p. 29, *infra*), but would also suffer a diminution in the demand for their products. This discrimination in favor of those farmers in a position to refrain from sending wheat into commerce presents a situation akin to that treated in the *Shreveport* and *Wrightwood* cases.

The wheat industry unquestionably is one of the great interstate industries of the Nation; the wheat consumed on the farm, although intrastate when looked at alone, forms an economically inseparable portion of the whole. In the *Olsen* case the Court applied to this very industry the principles enunciated in the *Swift* and *Stafford* opinions. That decision itself may be characterized in the language which it applied to the *Swift* case (262 U. S. 1, at 35):

* * * That case was a milestone in the interpretation of the commerce clause

of the Constitution. It recognized the great changes and development in the business of this vast country and drew again the dividing line between interstate and intrastate commerce where the Constitution intended it to be. *It refused to permit local incidents of great interstate movement, which taken alone were intrastate, to characterize the movement as such.* * * * [Italics supplied.]

We submit that these principles, uttered in connection with the wheat industry itself, are plainly applicable to the problem involved in this case, and that the power of Congress to treat the supply of wheat as an integrated whole should be upheld.

3. *Congress is entitled to establish a workable and enforceable quota system.*—The present program of applying the quota system to the entire supply rather than merely to wheat marketed was adopted largely because of (a) the difficulty in establishing a fair method of fixing quotas limited to marketing alone, and (b) the difficulty in administering and enforcing such a plan if marketing quotas were once established. Congress may properly take into account the workability and enforceability of various means of achieving its goal in determining which should be employed. This principle has often been applied so as to permit the control of intrastate activities in order effectively to attain a legitimate interstate objective under the commerce clause. (See pp. 37-43, *infra*.)

(a) *The difficulty in arriving at fair marketing quotas.*—The original 1938 Act provided for determination of a marketing percentage of the national acreage allotment which would produce the amount of the national marketing quota (Section 335 (a)). The national marketing quota was to be the amount equal to the normal year's domestic consumption and exports, plus 30 percent, less estimated carry-over and the estimated amounts to be used on farms as feed and seed (Section 335 (b)). The marketing quota for each farm was to be obtained by applying the marketing percentage to the acreage allotment for that farm, and determining the normal production of that number of acres (Section 335 (c), 52 Stat. 54). If, for example, 70 percent of the national acreage allotment would produce the national marketing quota, 70 percent would become the ratio used in determining the quota for all farms. Under this program the penalty was imposed only when the excess was marketed.

The proportion of his crop which a farmer will market in any particular year depends upon a great number of factors. These include the quality of his wheat, the yield, the weather, the number and kind of livestock and poultry he owns, the market price of such livestock and poultry, the price he can get for his wheat, the price he might have to pay for products used in place of his own wheat, and even the size of his family. Whether

or not he can use his own wheat for seed, for example, depends in large part upon the weather, since in unusually wet or dry years his wheat may be of doubtful quality for that purpose. These factors vary tremendously from farm to farm and from year to year even on the same farm. Some farmers dispose of substantially all of their wheat on the market, while others use widely differing proportions at home."

The establishment of farm marketing quotas by application to all farms of a uniform percentage would affect each farmer differently, depending upon the proportion of his crop which he can consume on his farm. The farmer who would normally not have marketed a greater quantity of wheat than the prescribed marketing percentage would not be required to make any reduction in the amount of wheat sold, or to store any wheat at all. Other farmers, who would normally have marketed more than their quota but who are able to increase the amount consumed on their farms, would also be in a position to avoid the effect of the allotment program. Many of them would use their own wheat in place of wheat or wheat products which they would normally have purchased on the market. The entire economic burden of

²² In 1940 the average percentage of the total wheat production that was sold in each state, as measured by value, ranged from 29 in Wisconsin to 90 in Washington (R. 61). The variation must have been much greater for individual farms.

reducing the quantity of wheat to be marketed would fall upon those farmers who could not use their wheat as seed or did not have large enough families or quantities of poultry or livestock to eat it. Indeed, the burden imposed upon such farmers would be enhanced by the curtailment in market demand on the part of farmers who sought to avoid the impact of the marketing-quota program by increasing the quantity consumed on their farms. (See pp. 19-21, *supra*.)

The result would be that the wheat of only those farmers unable to consume more than a certain percentage on their farms would be stored in order to achieve the statutory objective of saving up surpluses for use in time of shortage and thus facilitating the orderly flow of wheat. The beneficial effect of the program in raising prices on the market would, however, be enjoyed by all. All farmers, including those who own a substantial number of hogs to which they customarily feed wheat grown on the farm, would obtain the same advantages from the program on every bushel of wheat sold. A plan which helps all but imposes penalties and storage requirements upon only one group of the persons benefited is not fair or equitable.

Any effort to avoid this comparatively simple but unfair method of determining marketing quotas would require differentiation between farms upon the basis of the amount marketed by

each individual farm. Such a task would be immensely complicated and probably impossible. As has been indicated, the quantity and even the proportion of wheat marketed by a particular farmer varies with the weather, the price of wheat, the comparative price of livestock and feed, and other factors which change from year to year. Accordingly, the amount marketed in a single prior year or a general average based upon a number of years would not provide an accurate basis for determining the quantity to be marketed from each farm in any year in the future.

Furthermore, adequate figures are not available as to the past marketings from individual farms, and such information would be essential to the establishment of quotas based upon farm sales alone. In the absence of records, the collection from every wheat farmer of such information for past years to serve as a foundation for future allotments, would have been an enormously difficult and probably an impossible task. Cf. R. 50. Certainly it could not have been performed in time to permit control of the wheat surplus in existence when the 1941 amendment was enacted.

We think it clear that, since Congress may choose any appropriate means to carry out the powers granted to it (see pp. 43-53, *infra*), it may endeavor to avoid means which are unfair to the persons affected or are administratively impracticable. And its discretion in this respect is not

limited by the fact that the fair and workable plan " attains the desired commerce objective through control of intrastate activities. See pp. 37-43, *infra*. The doctrine of the *Shreveport* and *Wrightwood* cases permitting federal regulation of intrastate competitors of persons subject to federal control is closely analogous, for the regulation is extended to the intrastate activity because of the unfairness to the interstate if the former is free from control. A quota system having the effect of completely exempting farmers with home outlets for some of their wheat would similarly be inequitable to and discriminate against the farmers substantially affected by the statutory restrictions.

(b) *The difficulty in administering and enforcing marketing quotas.*—The legislative history of the May 26, 1941, amendment " to the Agricultural Adjustment Act reveals that it was adopted in order to insure the workability of the wheat quota system. The amendment had been recommended by the Department of Agriculture when the establishment of a wheat quota program first became imminent and when the difficulties of administering and enforcing the Act providing for quotas only on wheat marketed became apparent.

The committee reports show that the object of the amendment of May 26, 1941, was to simplify

" As to the power to adopt a plan which will be effective, see also pp. 37-43, *infra*.

" 55 Stat. 203, 7 U. S. C. (Supp. I) Sec. 1340.

the administration of the program and to avoid the "almost impossible task" of determining "the actual production and the actual marketings of the commodity on the farm." S. Rep. No. 143, H. Rep. No. 364, 77th Cong., 1st Sess. The House report states:

It has become apparent that certain changes are needed in the farm marketing quota provisions of the Agricultural Adjustment Act of 1938, as amended, relating to corn and wheat, if marketing quotas should become effective for those commodities for the 1941-42 marketing year. The proposed resolution is designed to simplify the administration of marketing quota programs on corn and wheat and to enable farmers to make the quotas more effective in accomplishing the purposes of the act.

* * *

The resolution, in effect, provides for the determination of a farm marketing excess on corn and wheat and puts the marketing penalty on this excess of the commodity, regardless of whether it is actually marketed, *thereby making unnecessary the determination of the actual production and the actual marketings of the commodity on the farm.* * * * [Italics supplied.]

The Senate report declares:

After considering the regulations which will be needed in the administration of the corn and wheat-marketing quota programs for the 1941-42 marketing year in the event that quotas become effective for that year,

the Department of Agriculture has advised this committee that the enforcement of the present provisions of the Agricultural Adjustment Act of 1938 will be extremely difficult. Under the present provisions of the act, the farm-marketing quota for corn or wheat is the actual production or the normal production, whichever is the larger, of the farm acreage allotment. It will be almost impossible to determine the actual production of corn or wheat produced on a farm, particularly where the producer is not participating in the farm program. The problem is also complicated by the fact that the marketing of corn or wheat as defined in the act includes the feeding to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, or are to be so disposed of. *The proposed joint resolution (S. J. Res. 60) is designed to simplify the administration of marketing quotas on corn and wheat and to enable farmers to make the quotas more effective in accomplishing the purpose of the act.*

* * * *

The redefining of the farm marketing quota is for the purpose of eliminating the necessity of determining the actual production of wheat or corn on each farm.

* * * *

The resolution in effect provides for the determination of a farm-marketing excess and puts the penalty on this excess of the commodity regardless of whether it is

actually marketed, thereby making unnecessary the determination of the actual production of the commodity on the farm. [Italics supplied.]

There is no suggestion in the legislative history of the amendment that Congress intended to deviate in any way from the objectives of the original Act or do more than alter the details of the quota system in order to make it effective. The judgment of the legislature on such a practical question as the feasibility of a particular method of attaining a legitimate goal should be accorded the utmost respect. As long as the good faith of the legislative body in seeking to accomplish an end within its power is not challenged and the means chosen has some reasonable relationship to the attainment of that end, the exercise of legislative discretion should be upheld. See cases cited pp. 43-53, *infra*.

That the legislative conclusion as to the necessity of amending the Agricultural Adjustment Act was not arbitrary or without reasonable foundation cannot be doubted. Under the Act before the amendment, which prescribed quotas only, for the quantity of wheat sold, the enforcing agency would have to keep track of the total quantity marketed by each farmer. To obtain such information it would be necessary, in view of the fact that wheat can be stored on the farm and disposed of at any time, to have permanent contact with each of the nearly 1,500,000 farms growing wheat

(R. 28) or with the thousands of local elevators, trucker-buyers, terminals and feed stores to whom the wheat is sold. Cf. R. 49-50.²⁵ Nor would it be feasible to ascertain the amount marketed by determining the amount produced and subtracting that consumed on the farm. Even when the acreage is known, the amount produced depends largely upon the vagaries of the weather. And it would obviously be even more difficult to learn with any degree of accuracy how many bushels were seeded and how many fed to livestock and poultry than to tell how much was marketed, particularly if the farmer was not completely cooperative.

If factual support for the congressional findings were otherwise lacking, it is supplied by the facts as stipulated in the record. This stipulation states that—"This diversified disposition of the farm production of wheat and the various methods of marketing make it difficult accurately to account for the actual amount, *as well as the final disposition*, of an individual farmer's wheat production" (R. 50). [Italics supplied.] "From the time wheat leaves the producer it usually cannot be traced as an individual shipment into the principal market channels" (R. 49).²⁶

In these circumstances, it was proper for Con-

²⁵ The record shows that there are over thirty thousand local elevators alone (R. 50).

²⁶ In these respects wheat differs from tobacco and cotton, which are marketed through a relatively small number of channels. See p. 5, *supra*.

gress to establish a simpler and more enforceable method of controlling the wheat surplus and its harmful effect upon commerce. That aim is accomplished by the system of regulation provided for in the amended Act. All that need be known is the wheat acreage planted by the farmer and the normal yield per acre, figures which are commonly known to or easily ascertainable by the local committee or the agents of the Department. If a producer plants acreage in excess of his allotment, the normal production of that excess acreage constitutes the excess over his quota, unless he proves the actual production of such acreage to have been less, in which case only does the latter figure prevail.²⁷ Penalties are to be paid on all of the excess not stored or delivered to the Secretary, and the farmer can market none of his wheat until such penalties are paid. If he attempts to do so without a marketing card certifying that he has complied with the program, the buyer is required to pay the penalty, with a right to deduct it from the purchase price.²⁸

²⁷ The Act specifically imposes upon the farmer the burden of proving to the satisfaction of the Secretary that the actual production was less than the normal production of the excess acreage. See Paragraph (3), Joint Res. of May 26, 1941, 55 Stat. 203, 7 U. S. C. (Supp. I), Section 1340 (3).

²⁸ Paragraph (8), Joint Res. of May 26, 1941, 55 Stat. 203, 7 U. S. C. (Supp. I), Section 1340 (8). See also U. S. Dept. of Agriculture, Agricultural Adjustment Administration, *Regulations Pertaining to Wheat Marketing Quotas for the 1941 Crop of Wheat*, Wheat-507, Part V.

The only objection urged against the plan prescribed by the May 1941 Amendment is that since it applies to all wheat it reaches that which is consumed on the farm—in other words, that it applies to intrastate transactions. It is not, and we believe that it cannot be, claimed that the plan is otherwise unreasonable. On the basis of the method of determining the farm acreage allotment prescribed by the Act (Sec. 334), the farm quota takes into account the total wheat acreage, including that grown to fill demands on the farm, and thus should provide ample wheat for normal farm consumption. Nor can it be claimed that the plan will not attain the ends sought, or that it is not more feasible and easy to administer and enforce than that which preceded it.

We submit that if a statute contains a reasonable method of achieving a legitimate object under the commerce clause, the fact that its impact falls upon intrastate transactions is entirely immaterial. Many cases testify to this.²⁹ The most recent illustration is *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 119, 121, wherein the Court declared:

²⁹ *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1; *United States v. Darby*, 312 U. S. 100; *United States v. Wrightwood Dairy Co.*, 315 U. S. 110; *Oklahoma v. Atkinson Co.*, 313 U. S. 508; *Mulford v. Smith*, 307 U. S. 38; *Curran v. Wallace*, 306 U. S. 1; *Chicago Board of Trade v. Olsen*, 262 U. S. 1; *Stafford v. Wallace*, 258 U. S. 495; *Shreveport Case*, 234 U. S. 342; *Southern Ry. Co. v. United States*, 222 U. S. 20; *B. & O. R. Co. v. Interstate*

* * * The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce. * * *

* * * It is the effect upon interstate commerce or upon the exercise of the power to regulate it, not the source of the injury which is the criterion of Congressional power. * * *

Since this doctrine is axiomatic, it is necessary to refer only to some of the situations in which it has been given effect because of difficulty in administering or enforcing a statute limited to interstate commerce alone. In *Currin v. Wallace*, 306 U. S. 1, *Mulford v. Smith*, 307 U. S. 38, and *United States v. New York Central R. R. Co.*, 272 U. S. 457, it would have been administratively impossible to segregate the products destined for interstate and intrastate shipment; accordingly, it was held that Congress could regulate all.

Commerce Commission, 221 U. S. 612; *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S. 194; *United States v. New York Central R. R. Co.*, 272 U. S. 457; *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295; *Local 167 v. United States*, 291 U. S. 293; *Aper Hosiery Co. v. Leader*, 310 U. S. 469, 484.

Under the Meat Inspection Act (34 Stat. 1260, 21 U. S. C., Secs. 71, 72, 78), federal agents examine animals in a factory during the production of meat as food, and require all unfit meat to be destroyed before it is known whether or not it is to move interstate. Although inspection might have been limited to meat ready for shipment in interstate commerce, considerations of administrative expediency were responsible for, and undoubtedly justify, the method long employed. Cf. *United States v. Lewis*, 235 U. S. 282; *Pittsburgh Melting Co. v. Totten*, 248 U. S. 1. Congress has power to prohibit the interstate movement of diseased livestock, or of livestock from infected areas. But the Federal Government need not wait at the point of shipment for animals sure to move in interstate commerce. In order that the interstate spread of disease may be controlled more effectively, compulsory inspection and dipping of all cattle in infected areas is permissible. *Thornton v. United States*, 271 U. S. 414; *Carter v. United States*, 38 F. (2d) 227 (C. C. A. 5), certiorari denied, 281 U. S. 753; cf. *United States v. Darby*, 312 U. S., at 121. Some of the cattle thus required to be inspected, like the wheat in question here, may be consumed on or never leave the farm or ranch on which they were raised. *United States v. Darby*, *supra*, sustained the validity of Section 15 (a) (2) of the Fair Labor Standards Act in part because the direct prohibition of

substandard labor conditions on goods produced for commerce served to effectuate the basic statutory policy of keeping such articles out of commerce. And Congress may build dams on non-navigable tributaries of a navigable river in order effectively to control floods on that river. *Oklahoma v. Atkinson Co.*, 313 U. S. 508, 525-526.

The same principle applies when control of intrastate acts will facilitate the enforcement of a commerce regulation. In *McDermott v. Wisconsin*, 228 U. S. 115, the Court held that the Food and Drugs Act permitted the Federal Government to seize misbranded goods while they remained unsold on a retailer's shelf, after interstate commerce had ceased and irrespective of whether they were still in original packages. This ruling invalidated a state law requiring a different label from the federal on such goods on the ground that it interfered with the enforcement of the federal statute.³⁰ The Court declared that (pp. 135-136):

* * * Congress may determine for itself the character of the means necessary to make its purpose effectual in preventing the shipment in interstate commerce of articles of a harmful character * * *

³⁰ The Court has also sustained the converse power of the states to regulate fish and wild game brought into the state from outside, in order to permit the enforcement of the state game laws. *Bayside Fish Co. v. Gentry*, 297 U. S. 422, 426; *Silz v. Hesterberg*, 241 U. S. 31, 39-40.

* * * To make the provisions of the act effectual, Congress has provided not only for the seizure of the goods while being actually transported in interstate commerce, but has also provided for such seizure after such transportation and while the goods remain "unloaded, unsold, or in original unbroken packages." The opportunity for inspection en route may be very inadequate. The real opportunity of Government inspection may also arise when, as in the present case, the goods as packed have been removed from the outside box in which they were shipped and remain, as the act provides, "unsold." It is enough, by the terms of the act, if the articles are *unsold*, whether in original packages or not. Bearing in mind the authority of Congress to make effectual regulations to keep impure or misbranded articles out of the channels of interstate commerce, we think the provisions of § 10 are clearly within its power. Indeed it seems evident that they are measures essential to the accomplishment of the purpose of the act.

Ruppert v. Caffey, 251 U. S. 264, although arising under another of the enumerated powers, affords a striking example of the power of Congress to enforce its policies through control of conduct not within any granted power. That case upheld the War-Time Prohibition Act, as amended in October 1919¹¹ to forbid the sale and manu-

¹¹ The statute involved in the *Ruppert* case was enacted before the adoption of the Eighteenth Amendment.

facture of liquor containing only one-half of one percent alcohol and concededly non-intoxicating. The Act was based upon the war powers, and the subjection of non-intoxicants to the prohibition was justified by the difficulties in law enforcement which would arise if it were necessary to distinguish between liquor which was and liquor which was not intoxicating. The Court held that the Prohibition Act was valid as a means of increasing "war efficiency" and that the ban on unintoxicating liquor was a legitimate means of insuring the enforceability of the Act. The Court declared (pp. 299-301):

* * * the implied war power over intoxicating liquors extends to the enactment of laws which will not merely prohibit the sale of intoxicating liquors but will effectually prevent their sale. * * *

* * * Since Congress has power to increase war efficiency by prohibiting the liquor traffic, no reason appears why it should be denied the power to make its prohibition effective.

The Court invoked a parallel doctrine as to the scope of state power, under the due process clause, quoting from *Purity Extract Co. v. Lynch*, 226 U. S. 192, 201, as follows:

* * * when a State exerting its recognized authority undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable

relation to that end as it may deem necessary in order to make its action effective. It does not follow that because a transaction separately considered is innocuous it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the Government. * * *

These cases show that the difficulties in administering and enforcing a quota system based entirely on the quantity of wheat marketed warrant resort to a plan which is enforceable, even though it requires the regulation of intrastate transactions.

Congress has the power to choose any means reasonably adapted to the attainment of a legitimate end under the commerce clause.—In the preceding sections of this brief we have attempted to state in detail the reasons why Congress has power under the commerce clause to control the entire supply of wheat, including that which may ultimately be used on the farm of the producer, and to point to principles and authorities showing that the plan adopted is valid. Since the power of Congress to control intrastate transactions in the exercise of its power over interstate commerce ultimately stems from the doctrine of implied powers and the

¹¹ See, also, *Everard's Breweries v. Day*, 265 U. S. 545, 560; *Otis v. Parker*, 187 U. S. 606, 609; *Westfall v. United States*, 274 U. S. 256, 259; *St. John v. New York*, 201 U. S. 633.

"necessary and proper" clause,³³ our arguments have sought to give particular application to the basic rule as to the power of Congress to choose the means to carry out its enumerated powers. A more generalized approach to this fundamental principle may also be helpful.

The movement of a commodity across state lines and its price unquestionably constitute interstate commerce. It is entirely proper under the commerce clause for Congress to seek to control the amount which flows in commerce and the price structure. Cf. *Mulford v. Smith*, 307 U. S. 38; *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533; *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381. The exercise of control over interstate flow and prices thus is a legitimate object of legislation under the commerce clause. It will, of course, not be denied that Congress has the power to choose the means to achieve such a legitimate end. The issue in this case is whether the particular means adopted is lawful.

The test to be applied in determining the validity of the means adopted by Congress has been stated time and again. In *United States v. Fisher*, 2 Cranch 358, 396, Chief Justice Marshall declared:

* * * Congress must possess the choice of means, and must be empowered to use any means which are in fact *conducive* to

³³ Article 1, section 8, clause 18.

the exercise of a power granted by the constitution. * * * [Italics supplied.]

These views were amplified shortly afterwards in *McCulloch v. Maryland*, 4 Wheat. 316, 409, 419, 421:

The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception.

* * * As little can it be required to prove, that in the absence of this clause, Congress would have some choice of means. That it might employ those which, in its judgment, would most advantageously effect the object to be accomplished. That any means adapted to the end, any means which tended directly to the execution of the constitutional powers of the government, were in themselves constitutional. * * *

* * * But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner

most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."³⁴

The principle has often been invoked to sustain federal control of intrastate transactions under the commerce clause. See cases cited, *supra*, pages 37-41, and in particular the quotation from *United States v. Wrightwood Dairy Co.* on page 38.

In the present case there can be no doubt that the method adopted by Congress is reasonably calculated to attain the end of restricting the flow of wheat in interstate commerce and preventing a large surplus from forcing prices down to ruinous levels. The only contention that we anticipate may be made is that the same result could have been accomplished through control of marketing alone. We have previously shown that such a system would have been ineffective, and would not have provided a satisfactory method of achieving the statutory objective. But, even if another effective method of attaining the end sought had been available, this would not make unconstitutional the use of a concededly reasonable means.

³⁴ See also *United States v. Darby*, 312 U. S. 100, 118; *Everard's Breweries v. Day*, 265 U. S. 545, 559; *Legal Tender Case*, 110 U. S. 421, 449.

The emphasis in the judicial descriptions of the applicable standard is on such words as "conductive,"³⁵ "appropriate,"³⁶ and "reasonably adapted."³⁷ The Court has never construed the Constitution as limiting Congress to the use of means indispensable to the accomplishment of an end. In *United States v. Fisher*, *supra*, Chief Justice Marshall first declared, with reference to the "necessary and proper" clause—

* * * In construing this clause, it would be incorrect, and would produce endless difficulties, if the opinion should be maintained, that no law was authorized which was not indispensably necessary to give effect to a specified power. Where various systems might be adopted for that purpose, it might be said, with respect to each, that it was not necessary, because the end might be obtained by other means. Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the constitution. * * *

And in *McCulloch v. Maryland* the great Chief Justice reaffirmed these views (4 Wheat. at 413-415):

* * * Does it always import an ab-

³⁵ *United States v. Fisher*; *McCulloch v. Maryland*, both *supra*.

³⁶ *McCulloch v. Maryland*; *United States v. Wrightwood Dairy Co.*; *Everard's Breweries v. Day*, *supra*.

³⁷ *United States v. Darby*, *supra*, at 121.

solute physical necessity, so strong, that one thing, to which another may be termed necessary, cannot exist without that other? We think it does not. If reference be had to its use, in the common affairs of the world, or in approved authors, we find that it frequently imports no more than that one thing is convenient, or useful, or essential to another. To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable. * * *

* * * It must have been the intention of those who gave these powers, to insure, so far as human prudence could insure, their beneficial execution. This could not be done by confining the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. * * * To have declared that the best means shall not be used but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances. * * *

The test has been summarized in the *Legal Tender Case* (110 U. S. 421, 440), as follows:

By the settled construction and the only

reasonable interpretation of this clause, the words "necessary and proper" are not limited to such measures as are absolutely and indispensably necessary, without which the powers granted must fail of execution; but they include all appropriate means which are conducive or adapted to the end to be accomplished, and which in the judgment of Congress will most advantageously effect it.

See to the same effect, *Everard's Breweries v. Day*, *supra*; *First National Bank v. Union Trust Company*, 244 U. S. 416, 419.

The authority of the legislature to select appropriate means of carrying out its powers thus is broad enough to permit Congress to adopt one method even though another is available, and irrespective of whether a court might be of the opinion that the method not employed was superior or preferable.

This principle applies, of course, when Congress is seeking to achieve a legitimate object under the commerce clause through the control of intrastate transactions. See cases cited p. 37, *supra*. Congress is not compelled to adopt one method rather than another which it deems more effective merely because the former would reach only interstate transactions or a lesser number of intrastate transactions.³⁵ Thus Congress may properly provide

³⁵ A quota system limited to marketing and excluding wheat consumed on the farm would necessarily apply to a large number of intrastate as well as to interstate sales. Cf. *Mulford v. Smith*, 307 U. S. 38.

for the protection of navigation on navigable rivers through projects located on non-navigable tributaries, whether or not the same purpose could be achieved by construction further down stream; it is for Congress to decide which method is the more feasible. Cf. *Oklahoma v. Atkinson Co.*, 313 U. S. 508. If a dam is to be built for a legitimate commerce purpose, it is not improper for Congress to provide that its height may be greater than that strictly necessary for navigation or flood control in order that power may be utilized to aid in financing the work. Cf. *Oklahoma v. Atkinson Co.*, *supra*; *Arizona v. California*, 283 U. S. 423. Congress may provide for federal acquisition and operation of intrastate electric power lines from a dam lawfully built, even though the power might have been disposed of through lines privately controlled. *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 339-340.

United States v. Darby is closely in point, insofar as it upholds Section 15 (a) (2) of the Fair Labor Standards Act. The object of that statute was to keep goods produced under substandard labor conditions out of interstate commerce. Section 15 (a) (1) prohibits the interstate shipment of such goods; Section 15 (a) (2) regulates the hours and wages of employees producing goods for interstate commerce. Both were held constitutional. But only the provision relating to interstate shipments would have been valid if the power to control intrastate acts had been

limited to situations where no other method of achieving the desired end was available. Similarly, in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, the Court did not think it necessary to consider whether obstructions to commerce caused by strikes could be prevented by a regulation more closely pertaining to commerce itself. It was sufficient that there was a reasonable basis for the congressional conclusion that a law prohibiting unfair labor practices would tend to prevent disputes which would obstruct commerce. The cases upholding the regulation of intrastate acts affecting interstate prices, without regard to the possibility of direct federal control of the interstate price structure, are also corroborative. See pages 14-15, *supra*.

These cases are merely illustrative of the general doctrine permitting Congress to choose an effective, even if not the most direct, means of carrying out the powers granted to it. The cases demonstrate that, since choice of the means to an end is a legislative matter, the "judgment of Congress" (*Legal Tender Case, supra*) as to what means are reasonably related to the end is ordinarily to be deemed controlling. Thus in *Staford v. Wallace*, 258 U. S. 495, at 521, and *Chicago Board of Trade v. Olsen*, 262 U. S. 1, at 37, the Court declared:

* * * Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of inter-

state commerce is within the regulatory power of Congress under the commerce clause, and *it is primarily for Congress to consider and decide the fact of the danger and meet it.* This court will certainly not substitute its judgment for that of Congress in such a matter *unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent.* [Italics supplied.]

See also, *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37; *Virginian Ry. Co. v. System Federation*, 300 U. S. 515, 553.

The test of appropriateness or reasonable relationship to the end sought to be attained is similar to that involved in determining the validity of legislation under the due process clause. Cf. *Nebbia v. New York*, 291 U. S. 502, 525-527; *Virginian Ry. Co. v. System Federation*, *supra*, at 553. This Court has recognized that when reasonableness is the test, the legislative judgment is not to be set aside as long as the statute has some "rational basis." *United States v. Carolene Products Co.*, 304 U. S. 144, 152. " * * * by their very nature such inquiries, where the legislative judgment is drawn in question, must be restricted to the issue whether any state of facts either known or which could reasonably be assumed affords support for it." (*Id.*, at 154.) See, also, *O'Gorman & Young, Inc. v. Hartford Fire Insurance Co.*, 282 U. S. 251; *Metropolitan Casualty Insurance Co. v. Brownell*,

294 U. S. 580, 584, and cases cited. In the *Carole* case the Court held that since the question as to the reasonableness of the legislation was "at least debatable," the finding of the Court could not be substituted for the decision of Congress. As the *Stafford* and *Olsen* cases, *supra*, show, substantially the same standard governs when the question is whether Congress has chosen an appropriate means of achieving a proper end under one of its granted powers.

We believe that not only is a quota system applicable to the entire wheat crop a reasonable means of accomplishing the legitimate congressional objective of controlling the amount of wheat marketed interstate and the interstate price level, but that no other method of attaining that end is feasible. We need not, however, sustain the burden of convincing the Court that the plan is the only possible one or even the best one. As this Court has frequently declared, legislation is to be sustained if the means chosen is appropriate or reasonably conducive to the accomplishment of the end. There can be no doubt that this test is satisfied. The cases hold that, if there should be a doubt, or if the question is debatable, the judgment of Congress is still to be accepted. Only if the basis for the congressional judgment is "clearly non-existent" would the Court be warranted in disregarding the congressional determination as to the means to be employed. Patently, no such conclusion can be reached here.

CONCLUSION

For these reasons it is respectfully submitted that the wheat-quota program contained in the Agricultural Adjustment Act of 1938, as amended, is a lawful exercise of the commerce power of Congress, as applied to the entire wheat supply, including the wheat which may be consumed on the farm.

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SEPTEMBER 1942.

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No. 1080 59

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OCTOBER TERM, 1941

CLAUDE R. WICKARD, SECRETARY OF AGRICUL-
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vs.

ROSCOE C. FILBURN,

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**ON APPEAL FROM THE DISTRICT COURT OF THE
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DISTRICT OF OHIO.**

BRIEF FOR THE APPELLEE.

✓ WEBB R. CLARK,
✓ HARRY N. ROUTZOHN,
ROBERT S. NEVIN,

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Dayton, Ohio.



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**WEBB R. CLARK,
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INTRODUCTION.

The brief of Counsel for Appellants, which we assume the members of the Court will have read first, discusses the relevant facts of this case and thus obviates the necessity of an attempt to fully discuss them herein. Therefore, for the sake of brevity, we shall endeavor to avoid repetition. For the same reason we shall make no effort to reply to the many subtle and inconsequential arguments with which opposing counsel's brief is filled. For a complete statement of our contentions we respectfully refer the Court to the Complaint of Appellee. (Record, page 1.).

Contrary to what may have been implied, we are not seeking to modify and invalidate the Agricultural Adjustment Act of 1938 in its original enactment, or as amended prior to the amendment of May 26, 1941. The issue is a simple one, namely, that the joint resolution of Congress, approved May 26, 1941, which amended the penalty provisions of the Agricultural Adjustment Act of 1938, was a departure from the philosophy and theory of the Act and a reversion ~~to~~ the Agricultural Adjustment Act of 1933, which this Court declared unconstitutional because it sought to regulate the production of farm products.

AMENDMENT OF MAY 26, 1941.

To avoid a misunderstanding as to the full import and effect of said amendment of May 26, 1941, and to convince the Court that opposing counsel are incorrect in

their assertion that appellee could escape paying the penalties, we quote the provisions of the aforesaid amendment:

(1) "The farm marketing quota under the Act for any crop of wheat shall be the actual production of the acreage planted to wheat on the farm, less the normal production or the actual production, whichever is the smaller, of that acreage planted to wheat on the farm which is in excess of the farm acreage allotment for wheat. The farm marketing quota under the Act for any crop of corn shall be the actual production of the acreage planted to corn on the farm, less the normal production or the actual production, whichever is the smaller, of that acreage planted to corn on the farm which is in excess of the farm acreage allotment for corn.

"The normal production, or the actual production, whichever is the smaller, of such excess acreage is hereinafter called the 'farm marketing excess' of corn or wheat, as the case may be. For the purposes of this resolution, 'actual production' of any number of acres of corn or wheat on a farm means the actual average yield of corn or wheat, as the case may be, for the farm, times such number of acres.

(2) "During any marketing year for which quotas are in effect, the producer shall be subject to a penalty on the farm marketing excess of corn and wheat. The rate of the penalty shall be 50 per centum of the basic rate of the loan on the commodity for cooperators for such marketing year under section 302 of the Act and this resolution.

(3) "The farm marketing excess for corn and wheat shall be regarded as available for marketing, and the penalty and the storage amount or amounts to be delivered to the Secretary of the commodity

shall be computed upon the normal production of the excess acreage.

"Where, upon the application of the producer for an adjustment of penalty or of storage it is shown to the satisfaction of the Secretary that the actual production of the excess acreage is less than the normal production thereof, the difference between the amount of the penalty or storage as computed upon the basis of normal production and as computed upon the basis of actual production shall be returned to or allowed the producer. The Secretary shall issue regulations under which the farm marketing excess of the commodity for the farm may be stored or delivered to him. Upon failure to store or deliver to the Secretary the farm marketing excess within such time as may be determined under regulations prescribed by the Secretary, the penalty computed as aforesaid shall be paid by the producer. Any corn or wheat delivered to the Secretary hereunder shall become the property of the United States and shall be disposed of by the Secretary for relief purposes in the United States or in foreign countries, or in such other manner as he shall determine will divert it from the normal channels of trade and commerce.

(4) "Until the producers on any farm store, deliver to the Secretary, or pay the penalty on, the farm marketing excess of any crop of corn or wheat, the entire crop of corn or wheat, as the case may be, produced on the farm shall be subject to a lien in favor of the United States for the amount of the penalty.

(5) "The penalty upon corn or wheat stored shall be paid by the producer at the time and to the extent of any depletion in the amount of the commodity so stored, except depletion resulting from some cause beyond the control of the producer.

(6) "Whenever the planted acreage of the then current crop of corn or wheat on any farm is less than the farm acreage allotment for such commodity, the total amount of the commodity from any previous crops required to be stored in order to postpone or avoid payment of penalty shall be reduced by that amount which is equal to the normal production of the number of acres by which the farm acreage allotment exceeds the planted acreage. The provisions of section 326 (b) and (c) of the Act shall be applicable also to wheat."

THE AMENDMENT OF MAY 26, 1941, COMPARED WITH THE ORIGINAL 1938 ACT. ITS EFFECT.

The 77th Congress by the enactment of the joint resolution of May 26, 1941, amending the provisions of the Act of 1938 relating to wheat, worked a complete departure from the basic theory of regulating marketing of the commodities and attaching the penalties thereto at the time of sale.

One need but refer to the penalty provisions of the original Act of 1938, pertaining to the different commodities, to be convinced that at that time there was an honest attempt on the part of Congress to apply the penalty provisions to a marketing quota rather than to an acreage or production quota. Section 314, the penalty provision relating to tobacco, specifically provides that the penalty shall be paid at the time the tobacco is sold in the market, and, moreover, provides that the penalty shall be paid by the buyer rather than the producer. Section 325, the penalty provision relating to corn,

stated that "any farmer who . . . markets corn . . . shall be subject to a penalty of 15 cents per bushel of the excess so marketed." This section was in force and effect, the same as the wheat penalty section, until May 26, 1941. Section 339, the penalty provision relating to wheat, stated, prior to May 26, 1941, "any farmer who . . . markets wheat in excess of the farm marketing quota for the farm on which such wheat was produced, shall be subject to a penalty of 15 cents per bushel of the excess so marketed." Section 348, the penalty provisions relating to cotton, provides "any farmer who . . . markets cotton . . . shall be subject to the following penalties with respect to the excess so marketed." Section 356, the penalty provision relating to rice, provides "any producer who markets rice in excess of his marketing quota shall be subject to a penalty of one quarter of one per cent per pound of the excess so marketed."

Considering the above quoted provisions of the original enactment of the 1938 Act and comparing them to the amendment of May 26, 1941, it is obvious that Congress abandoned the wheat marketing theory and the interstate commerce theory when it imposed the penalty on the excess wheat at harvest and denied farmers the right to market or otherwise dispose of any of their wheat until the aforesaid penalty was paid. Furthermore, it is a misnomer to call the penalty provisions of May 26, 1941, "wheat marketing penalties" when actually they are "production penalties."

DISCRIMINATORY FEATURES OF THE AMEND- MENT OF MAY 26, 1941.

There are no benefits under this Act enuring to those who do not cooperate. In truth and in fact the penalties imposed upon the non-cooperating wheat farmer are punitive in their nature and effect and are so intended. Otherwise, there would be no discrimination in the Act between the cooperators and the non-cooperators. For example, each would be entitled to the same treatment as to loans provided for under the Act. The non-cooperators are purposely and intentionally punished. Admitting for the sake of the argument that in some remote and mystical manner, interstate commerce can be affected by the non-cooperators using on the farm their excess wheat, it cannot under any stretch of the imagination be conceived that the farmers would affect interstate commerce by destroying their excess wheat. By destroying their excess wheat they would be forestalling the possibility of the excess wheat affecting in any degree whatsoever interstate commerce. This is more than can be said for the Secretary of Agriculture when he is permitted to confiscate it. One of the alleged methods of avoiding paying the penalty is for the producer to deliver his excess wheat to the Secretary of Agriculture who in turn is permitted to dispose of the wheat in some manner of his own choosing as directed under the Act. If the Secretary of Agriculture were to turn the excess wheat over to the Red Cross or to starving peoples of other nations there would be some who would argue that

such action of the Secretary would affect the commerce of wheat.

Cotton and tobacco farmers are permitted to store their products for marketing in future years. Wheat farmers, under the provisions of the Act as amended on May 26, 1941, are denied the privilege of storing their wheat, any part of it, without paying the penalty of 49 cents a bushel on all of the excess production. By thus storing their wheat they would not be affecting the flow of interstate commerce during the time that it remained in storage, although their purpose might be to sell it not locally, but to ship it in interstate commerce.

Another inequality which might be considered is that the amendment of May 26, 1941, creates the fiction that all the excess wheat produced is available for marketing. Wheat, like cotton and tobacco, may be stored for long periods of time, and it frequently is. Wheat farmers either own or rent threshing machines or pay for the threshing, all of the threshing being done on the farm. The farmers keep the straw for their own farm purposes and likewise keep and store their wheat on the farm, often consuming all the wheat on the farm. The farmers who thus consumed or stored their wheat in harvest time in 1941 could not reasonably be charged with having burdened the normal currents of commerce in wheat during the marketing year of 1941-1942 unless and until they removed their wheat from storage and took it somewhere to market it for interstate shipment.

The result is that not an equality but a gross unequal-

ity is established, for the reason that under the provisions of the Act cotton and tobacco farmers are privileged to hold their excess products sans penalty, indefinitely, and for marketing in any year other than the one in which a marketing quota has been declared. On the other hand, the wheat farmers cannot store, or, what's more, use for domestic consumption, any portion of their wheat crop without paying the 49 cent penalty on the excess or permit the government to confiscate said excess. The wheat farmers cannot even destroy the excess and then sell the normal production. The excess wheat is not even permitted to rot on the ground, be wasted, or destroyed without paying the penalty. This is certainly violative of the 5th Amendment to the Constitution, to say nothing of being punitive and coercive, and regulative to the point of invading state and individual rights.

HISTORY OF RECENT FARM LEGISLATION PERTAINING TO WHEAT PRODUCTION.

The original Agricultural Adjustment Act was passed May 12, 1933, by the 73rd Congress. The expressed purpose of the Act was the relief of distressed farmers. The proposed relief was to be accomplished by entering into agreement between the Government, through the Secretary of Agriculture, and those farmers who were willing to contract with the Government by agreeing to restrict or limit production of certain basic commodities, including wheat, by and through a decrease of production acreage. The contracting, or what were and still are called, cooperating farmers, were to be paid benefits of

so much per acre for every acre which under the agreement they refrained from seeding or planting. The revenue for these cash benefits was to be raised by a processing tax upon all immediate processors of farm products. Thus, the ^{First} Agricultural Adjustment Act was based upon voluntary participation by the farmers or producers and payment of benefits financed by an obligatory processing tax on the specifically mentioned basic commodity of wheat, corn, cotton, hogs, tobacco, rice and milk.

However, on January 6, 1936, this Court in the case of United States vs. Butler, 297 U. S., at page 1, declared the Act unconstitutional in respect to both the tax and the alleged "voluntary" participation, holding that as to the latter the Congress had no authority to regulate farm production, and no legal right to coerce the farmer by such an "illusory" method as benefit payments for restricted production.

Immediately after the rendition of that decision the Congress took further action and repealed in toto such compulsory acts as the Bankhead Cotton Act, the Kerr-Smith Tobacco Act, and the Warren Potato Act, realizing that the Supreme Court would likewise promptly declare them unconstitutional. Within sixty days, to-wit, on February 29, 1936, the Congress passed a substitute for the declared unconstitutional Agricultural Adjustment Act, known as the Soil Conservation and Domestic Allotment Act, providing therein for benefit payments to farmers based on compliance with soil conservation practices and extending the agreed restriction of acreage to

all crops instead of merely the basic ones enumerated in the original Agricultural Adjustment Act.

On February 16, 1938, the 75th Congress passed the second Agricultural Adjustment Act. This second and present Act provides for the payment of parity prices or parity income to the producers of wheat, corn, cotton, tobacco and rice. It provides for commodity loans, compliance with the Act being a condition precedent to the obtaining of the loan. It sets up the machinery for farmers to vote on the question of compulsory marketing quotas. It prescribes penalties for all who produce in excess of the acreage allotments granted by the Secretary of Agriculture.

No election or referendum was held as to wheat production until May 31, 1941. In other words, in the years 1938, 1939 and 1940, the compulsory features of the Act were not invoked by the Secretary of Agriculture by a call of a referendum although during those years there were surpluses of wheat which warranted an invocation of the referendum prescribed in the Act.

The Secretary of Agriculture, acting pursuant to and in accordance with the applicable provisions of the Agricultural Adjustment Act of 1938, as amended, proclaimed (1) that the national acreage allotment for the 1941 crop of wheat was 62 million acres and the total and normal supply of wheat for the marketing year commencing July 1, 1940, were 949 million and 872 million bushels, respectively; (2) that the Secretary of Agriculture apportion the national acreage allotment of 62 million acres among the several states; (3) apportioned the State acreage

allotments among the counties; (4) issued regulations relating to counties' normal yield of wheat; (5) issued regulations authorizing the County Committees to determine and fix the acreage allotments among the farmers in the respective counties throughout the Nation; (6) issued regulations authorizing the County Committees to determine and fix the acreage allotment and normal yields of wheat in the respective Counties; (7) issued a proclamation making the national marketing quota for wheat effective with respect to the 1941 crop, stating that the total supply of wheat on hand and harvested in 1941 was one billion 236 million bushels and that such supply would exceed a normal year's consumption and exports of 755 million bushels by more than 35 per cent; (8) issued instructions relating to the referendum of wheat producers to be held on May 31, 1941; (9) issued the proclamation setting forth the results of the referendum and stating that a total of 559,630 wheat farmers voted in forty states; that of this number 453,569, or 81 per cent voted in favor of marketing quotas and 106,061, or 19 per cent opposed the quotas.

The Court's attention is respectfully called to page 17 of the Record which contains a summary of the results of the referendum by states. The Court will note that Indiana, New Jersey, New York, Ohio, Pennsylvania and West Virginia, among others, all large ^{wheat} producing states, voted against the alleged marketing quotas, and that the referendum was carried by a more than two-thirds vote solely by the votes of the large wheat producing States of the West.

While it is true that appellee, as well as the other wheat farmers of the United States, was notified in 1940 of his acreage allotment, he had no reason to believe that the Secretary of Agriculture in May of 1941 would declare a wheat marketing quota for that year. The Secretary had in like manner, during the previous years, notified the appellee and the other wheat farmers of the United States of their allotments. But in each instance he had failed to follow through with a declaration of a wheat marketing quota. In fact, the indications to appellee and all other wheat farmers throughout the Nation were that because of the war there would be a shortage of wheat in 1941. In the fall of 1940, when the wheat was planted, the Secretary of Agriculture himself shared this opinion with the farmers of the Nation and according to his own admissions encouraged the deliberate planting of more than the allotted acreage.

Not until May 9, 1941, did appellee or the other wheat farmers of the Nation learn that the Secretary of Agriculture had changed his opinion. It was on that date, for the first time under the enactment of the Agricultural Adjustment Act of 1938, that the Secretary of Agriculture sought to establish marketing quotas for wheat. The significant fact to remember is that the proclamation of the Secretary of Agriculture on May 9, 1941, under and by virtue of the provisions of the Act, established as of that date wheat marketing quotas for 1941. When appellee and the other wheat farmers of the Nation planted their wheat in 1940 they knew but one thing, namely, that if a wheat marketing quota would be de-

clared in 1941, they would be subjecting themselves to a penalty of 15 cents per bushel for the excess bushels of wheat produced, and that the 15-cent penalty would not be assessed against him or them until the excess wheat was taken to the market and sold. On May 9, 1941, when the Secretary of Agriculture proclaimed wheat marketing quotas for the year 1941, there was in effect Section 339 which provided for the payment of the aforesaid 15-cent penalty on the sale or marketing of the excess wheat. We therefore emphasize the fact that the amendment of May 20, 1941, which superseded Section 339 with the 15-cent penalty aforesaid, was passed and became effective after the wheat marketing quota for 1941 was in full force and effect. The referendum which was to follow on May 31, 1941, had nothing to do with establishing the effectiveness of the wheat marketing quota for 1941. The proclamation of the Secretary of Agriculture on May 9, 1941, established the wheat marketing quota for that year. It was only subject to being set aside by an adverse referendum vote on May 31, 1941.

SPEECH OF THE SECRETARY OF AGRICULTURE.

The Court is respectfully requested to read every word of the speech of the Secretary of Agriculture which he made at Huthcheson, Kansas, on May 19, 1941. (Record, pages 20 to 28.) This speech was part of the aggressive campaign carried on by the Secretary of Agriculture to induce the farmers of the Nation to vote favorably on the wheat referendum to be held on May 31, 1941. The Court

will find in that speech not only an appeal to the farmers, but coercion and threats as well. Nowhere in that speech can it be reasonably contended that the Secretary of Agriculture gave any indication to the farmers of the Nation of the May 26, 1941, amendment, or of the intention to change the wheat penalty provisions of the Act. Judging from the speech alone, the Secretary of Agriculture was totally oblivious to any contemplated action on the part of Congress looking toward the amendment of the wheat penalty provisions.

Government counsel, since appealing the case to this Court, have attempted to bolster their case by adding what they term Appendix No. 1, which is a purported press release, of date May 27, 1941. Previous to the hearing of the case before the three-judge court, counsel for the parties had entered into a stipulation of facts and this purported press release was never submitted by Government Counsel and nowhere is it a part of the record in this case. We feel that it should be ignored by this Court, not only because it does not constitute a part of the record of the case, but furthermore, because there is nothing to indicate to this Court that the purported release was ever published. But if the Court wishes to go farther and consider the purported press release, we assert that there was not sufficient information in that to warn the farmers of the penalty provisions of the May 26th amendment, and thus give them an opportunity to vote intelligently and advisedly on May 31, 1941.

The speech of May 19, 1941, was the climax of the campaign conducted by the Secretary of Agriculture, and the

farmers of the Nation had the right to rely upon his words orally and directly addressed to them on that date.

The majority opinion of the three-judge court, at page 109 of the Record, is respectfully referred to. The Judges who rendered that opinion quote the following language from the Secretary's speech:

" * * * To make wise decisions, we need to know the facts. What then, in view of the vote on May 31, are some of the facts about wheat? For one thing, we have a record amount of old wheat on hand and a bumper crop in prospect. That is something to be looked at with satisfaction on one hand and with alarm on the other. * * * Because of the uncertain world situation, we deliberately planted several million extra acres of wheat this year. * * * Farmers should not be penalized because they have provided insurance against shortages of food. The nation wants farmers safeguarded against unfair penalties. The nation also wants other protection given agriculture. * * * As you all know, parity is one of the most important objectives of the national farm programs and will continue to be a goal, * * *"

"Only last week, the Senate and House sent to the White House a bill calling for an 85 per cent of parity loan for wheat * * *"

"But no wheat loan will be made unless wheat farmers vote for marketing quotas and without the loan there is no hope for parity on wheat in 1941. So parity for wheat is up to the wheat farmers themselves. * * *"

"The law provides that wheat loans will not be made if wheat growers vote down marketing quotas.

* * * The continuance—or discontinuance—of government loans on wheat is at stake in this referendum on May 31. To put it bluntly, no quotas, no

loans. And, judging from prices in Canada, rejection of marketing quotas on May 31 would just about cut the price of wheat in this country in half.

"I wish that corn and wheat farmers were able to vote on marketing quotas before they plant their crops, instead of afterwards as is the case now. Cotton, tobacco, and rice farmers vote on quotas before they plant and I see no good reason for denying this privilege to wheat and corn growers. I am sorry that the legislation authorizing loans at 85 per cent of parity did not change the time for voting on wheat and corn quotas. This provision was recommended by the Department of Agriculture and we plan to recommend it to Congress again. Yet the fact that the referendum on wheat quotas comes after the crop is almost ready for harvest in no way alters the significance of the vote. * * *

"The above language evidently impressed the Judges who rendered the majority opinion of the Court not only with the fact that the May 26 amendment was retroactive in its nature and effect, but that the equities of the case were altogether favorable to the appellee. We wish to point out an additional fact for the consideration of this Court, namely, that when the Secretary of Agriculture made his speech he failed to mention that there would be a change in the law to the effect that the law would not apply to those farmers who planted 15 acres or less. The actual fact is quite significant, namely, that not until several hours after the polls had opened on May 31, 1941, did the Secretary of Agriculture notify the farmers of the Nation that all of them who had planted 15 acres or less would be disfranchised; in other words, not permitted to vote. (See Federal Registers, Daily

Editions, Vol. 6, No. 26, pp. 1093-1095; Vol. 6, No. 94, pp. 2420-2421; and Vol. 6, No. 107, p. 2689.) Thus, it will be seen that the Secretary of Agriculture changed the rules of the game after the game had started. These changes were drastic and seriously affected the rights and privileges of those whose livelihood is concerned with the production of wheat and other farm commodities.

LAW OF THE CASE.

We realize that this Court is thoroughly conversant with all of the decisions cited by Government Counsel as well as the decisions which we might cite as applicable to the facts of this case. We therefore believe it unnecessary for us to quote from or to enter into any extensive arguments disagreeing with the constructions placed upon those decisions by Government Counsel. Government Counsel have cited the Mulford case in support of their contentions. We radically disagree with them on the import and effect of the Mulford decision for we believe it to be thoroughly in accord with our views and that it supports our contentions. Among other things, it defines the limitations of the Interstate Commerce Clause of the Constitution as applied to the Agricultural Adjustment Act of 1938. Based upon the tobacco marketing penalty, it implies that Congress does not have the power to regulate production or the power to coerce. It is pointed out therein that "regulations to be effective must, and therefore may, constitutionally apply to all sales." At page 47 of the opinion it is stated:

"The statute does not purport to control production. It sets no limit upon the acreage which may be planted or produced and imposes no penalty for the planting and producing of tobacco in excess of the marketing quota. It purports to be solely a regulation of interstate commerce, which it reaches and affects at the throat where tobacco enters the stream of commerce,—the marketing warehouse. . . . Regulation to be effective, must, and therefore may, constitutionally apply to all sales. . . . Any rule, such as that embodied in the Act, which is intended to foster, protect and conserve that commerce, or to prevent the flow of commerce from working harm to the people of the nation, is within the competence of Congress. Within these limits the exercise of the power, the grant being unlimited in its terms, may lawfully extend to the absolute prohibition of such commerce, and a fortiori to limitation of the amount of a given commodity which may be transported in such commerce. . . ."

"On the basis of these facts, it is argued that the statute operated retroactively and therefore amounted to a taking of appellants' property without due process. The argument overlooks the circumstances that the statute operates not on farm production, as the appellants insist, but upon the marketing of their tobacco in interstate commerce. The law, enacted in February, affected the marketing which was to take place about August 1st following, and so was prospective in its operation upon the activity it regulated. The Act did not prevent any producer from holding over the excess tobacco produced or processing and storing it for sale in a later year; . . ."

The prime distinction between the Mulford case and the present case is the intervention between the May 9,

1940, proclamation when the quotas were announced as effective and the referendum of May 31, 1941, of the amendment of May 26, 1941, which operated retroactively and not prospectively on the farmers' crops. Furthermore, the amendment of May 26, 1941, does exactly what the Mulford case prohibits, namely, (1) controls production, (2) it sets limitations upon acreage to be planted or produced, (3) it imposes penalties for the planting and production of wheat in excess of the marketing quota, (4) it is not such a regulation of interstate commerce which reaches and affects the source where it enters the stream of commerce, (5) it does not apply to sales. In those respects the amendment of May 26, 1941, in view of the Mulford case, cannot be held constitutional. Both the Butler and Mulford cases are the law as announced by this Court.

The case of *United States vs. Darby*, cited by Government Counsel, is favorable to and supports our contention that there remain well-defined limitations to the extension of the Interstate Commerce Clause. The Darby case goes no farther than the Mulford case, or the original penalty provisions of the Act of 1938, and it limits the constitutional power of Congress invoked under the Commerce Clause to shipments in interstate commerce and to the production of goods manufactured and destined for shipment in interstate commerce.

Government Counsel, in their brief, have pointed out the difference between wheat, as a commercial product, and other products of the farm. They note that tobacco is not consumed on the farm where raised, but is raised

solely for sale; that the same applies to cotton. They candidly state that wheat is produced for consumption either on the farm or in the locality where it is raised, and that it is not essentially such a commercial product as requires interstate shipment. Their brief points out that a large portion of the production of wheat is used locally and, if sold, is sold to local elevators. They point out that there are thirty thousand local elevators. It is not such a product as can be said competes with other products that enter into interstate commerce. Government Counsel point out that practically all farmers sell locally, indicating that wheat does not come within the category of milk and other farm products that are sold directly in interstate commerce. This distinguishes our case from such cases as *The United States of America vs. The Wrightwood Dairy Company*, and *Clover Leaf Butter Company vs. Patterson*, cited by Government Counsel.

Government Counsel cite the fact that it is impossible to trace the wheat production of any one farm into interstate commerce. They can arrive at figures showing how many bushels are sold but of the amount sold they are unable to state what portion, if any, enters into interstate commerce. Our reason for stating this is that sales of wheat are local.

The misrepresentations complained of in *United States vs. Rock Royal Cooperative* are not at all comparable with the speech the Secretary of Agriculture made directly to the wheat farmers of the Nation on May 19, 1941. We, therefore, feel that the *Rock Royal* case can

easily be distinguished from the case at bar. Milk was the product in the Rock Royal case and that entered into interstate commerce and affected the price as well. All of this, this Court has held, could be regulated under such circumstances. Consequently, the only two cases that can apply to the situation at hand are the Butler case and the Mulford case. They are the only two that have any factual similarity.

Respectfully submitted,

WEBB R. CLARK,
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No. 50

**IN THE SUPREME COURT OF THE
UNITED STATES**

OCTOBER TERM, 1942

**CLAUDE E. WICKARD, SECRETARY OF AGRICUL-
TURE OF THE UNITED STATES, ET AL.,**
Appellants,

vs.

BOSCOE C. FILBURN,

Appellee.

**ON APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN
DISTRICT OF OHIO.**

BRIEF FOR THE APPELLEE ON RE-ARGUMENT

**WESB R. CLARK,
HARRY N. BOUTZOHN,
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**IN THE SUPREME COURT OF THE
UNITED STATES**

OCTOBER TERM, 1942

No. 59

**CLAUDE R. WICKARD, SECRETARY OF AGRICUL-
TURE OF THE UNITED STATES, ET AL.,**
Appellants,

VS.

ROSCOE C. FILBURN,
Appellee.

**ON APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN
DISTRICT OF OHIO.**

**BRIEF OF ROSCOE C. FILBURN, APPELLEE ON
RE-ARGUMENT**

**WEBB R. CLARK,
HARRY N. ROUTZOHN,
ROBERT S. NEVIN,**

**Attorneys for Appellee,
Dayton, Ohio.**

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ARGUMENT OF FACTS.

Counsel for the Government seem unwilling to concede that this Court acted advisedly when it ordered reargument "limited to the question whether the Act, in so far as it deals with wheat consumed on the farm of the producer, is within the power of Congress to regulate commerce."

In the opening paragraph of their brief they seek to evade the issue—stated in the Court order—by resorting to a vastly different premise for their argument.

In their statement of their premise, though, they are forced to include for consideration the fact that producers do consume—for feed, seed and food—a substantial portion of the wheat they individually produce on their respective farms.

Throughout the Record, as well as the two briefs filed in this Court by Counsel for the Government and our former brief filed in this Court, (which we earnestly request the Court to consider in connection with this brief) two indisputable facts are evident: (1) that of necessity wheat farming presupposes the consumption by the producer of a portion, and in many instances all, of the wheat he produces, and (2) that the Act as amended May 26, 1941, proscribes the use by the producer of his own wheat, though the product be used as food for himself and family, feed for his livestock and poultry, or seed for next year's crop.

These facts based our challenge of the May 26, 1941,

amendment as palpably unconstitutional. Counsel for the Government differed with us and willingly accepted the issue by stipulating that appellee, Filburn, raised wheat for consumption on the farm as well as for market, and said stipulations are silent as to any of his marketed wheat ever entering interstate commerce. (Record, pp. 18-19.)

Counsel for the Government now seek to evade the issue they so willingly accepted heretofore by stating that the question they "feel" should be considered is "whether, as a means of regulating the amount of wheat marketed and the interstate price structure, Congress has the power to control the total available supply of wheat, including, of course, that which is consumed on the farm."

In presenting this hypothesis Counsel ignore other stipulated facts—facts prepared for the Record by the statisticians and economists of the Department of Agriculture—that wheat, unlike cotton, tobacco and rice, is not essentially an interstate commerce product; that it is impossible to trace the product, even when sold and delivered to one of our more than thirty thousand local elevators, into interstate shipment; that a substantial portion of the wheat harvested every year never enters the stream of commerce, either interstate or intrastate, and was grown and harvested, solely, for consumption on the farms where raised.

The wheat raised for consumption on the farm where produced is not *available for market*. Its availability is limited to its intended and necessary use as feed, seed

and food on the farm where produced. Therefore there does not enter into the equation "the amount of wheat marketed and the interstate price structure."

The declared intent and purposes of the Agricultural Adjustment Act of 1938 are to amply insure the "balanced flow" of the basic agricultural commodities—corn, wheat, tobacco, cotton and rice—and regulate the orderly marketing and the price of these commodities. The Act as originally enacted was to be enforced by the assessment of a penalty, payable by the buyer or the producer, at the time and place the commodities are sold.

This Court in *Mulford vs. Smith*, 307 U. S., 38, sustained the original enactment as constitutional, holding that the Act did not regulate production by assessing penalties at the time and place the commodity (tobacco) entered "*the throat of commerce*" and implying that production would be regulated if the penalties were applied prior to sale and delivery to the market. The penalty provisions relating to tobacco, cotton and rice remain the same as when the Act was originally enacted. The Act, its expressed intent and purposes, has been proved effective as to tobacco, cotton and rice. Obviously, as to them there has been, since 1938, a satisfactory "balanced flow," orderly marketing and a sustained price.

The penalty provisions as to corn and wheat were changed May 26, 1941, though no marketing quota for corn has been declared.

More than two years ago appellee, Filburn, and tens of thousands of wheat farmers throughout the Nation (wheat is grown in every State but Florida) seeded their

fields for the summer harvest of 1941. No marketing quotas for wheat had been declared since the original enactment in 1938. Appellee and the other wheat farmers who seeded more than their allotments shared with the Secretary of Agriculture the belief that the war then raging in Europe would cause a demand for increased production of wheat and all other farm commodities.

Foreseeing this increased production, and frankly admitting his encouragement of it, the Secretary of Agriculture on May 9, 1941, (which was after the 1941 wheat harvest began in some of the States) declared a wheat marketing quota for 1941. At that time the penalty provisions, prescribing a penalty of fifteen cents per bushel on all wheat *marketed*, were still unchanged. The change came on May 26, 1941, effectually "freezing" every bushel of wheat harvested by every individual farmer who had exceeded his acreage allotment when he planted his wheat in the fall of 1940.

In the light of these facts, and many more which could be cited, all of which appear in the Record, the Court, we assume, will take judicial notice of what is commonly known to have transpired since said amendment, in determining whether the present penalty provisions on wheat do not regulate production rather than effect, fictitiously, the balanced flow, orderly marketing and interstate price structure of the product.

Considering that all of the wheat harvested in 1941 by appellee and all others who exceeded their allotments has been withheld from the market, and has not been used or consumed in any manner, and the fact that the Secretary

of Agriculture did not use his granted authority to remedy any adverse conditions, if any have existed, we conclude that the Secretary does not share the opinion of his eminent counsel that this frozen wheat has an effect upon interstate commerce and the price structure. That portion of the "frozen" harvests of 1941 (and 1942?) which was purposely raised for the market obviously was not by the Secretary considered "available for the market" to the extent that its retention by the producers seriously affected the "balanced flow," the orderly marketing or the interstate price structure. With much less vehemence can it be asserted that the large though now frozen quantity of wheat harvested in 1941 (and 1942), which was grown by the wheat farmers of the nation necessarily for their feed, seed and food, affected in any appreciable degree the aforesaid "balanced flow," the orderly marketing or the interstate price structure. If at any time it did affect the "balanced flow," et cetera, the Secretary undoubtedly would have exercised his powers under the act.

Whatever reasoning may be provoked by the above, the indisputable facts remain that a vast amount of the frozen 1941 (and 1942) harvests was raised and was needed for feed, seed and food on the farms where it was produced; that none of it can plausibly be considered available for market; and that by depriving the farmers of the use of their own product, compelling them to go into the market and purchase what they need for their own consumption, is an unwarranted regulation of production; deprives the producer of his right to use and

enjoy the fruits of his own labor; and is violative of the Constitution.

ARGUMENT OF LAW.

The cases of *United States vs. Butler*, 297 U. S., 1, and *Mulford vs. Smith*, 307 U. S., 38, are the only two cases decided by this Court pertinent to the issue now up for reargument. These we have discussed in our former brief filed in this Court.

Though Government Counsel have cited numerous other cases, the cited cases have but one point in common, viz., the control of intrastate commerce if and when it is found to affect interstate commerce. With these cases we can agree wholeheartedly, and without detracting one iota from our argument, for neither intrastate nor interstate commerce, nor a commingling of the two, is here concerned. The wheat that the farmer may consume on his own farm as feed, seed or food at no time moves into commerce between the States nor into intrastate channels—because it is never marketed. Yet Government Counsel insist that wheat used on the farm for the farmer's own purposes is in competition with commercial feeds and seeds and comes, therefore, under the ruling of the case of *United States vs. Wrightwood Dairy Company*, 315 U. S., 110.

Analyzing the *Wrightwood Dairy Company* case, it can be readily seen that Government Counsel have jumped to a conclusion at which this Court never arrived. Nowhere in that case was it said or implied that the original producer of the milk, from whom the Wrightwood Dairy purchased, could not use that milk on his own farm which

he did not sell to the Dairy Company, either as food for himself and family or for his livestock. The Court went no further than to regulate the "middleman" in his commercial transactions. It cannot be said that commerce, at least as we commonly know it, and without esoteric connotations, entered the picture in that case until an exchange of goods (milk) for money occurred. No more does commerce in the accepted meaning enter the picture in the present case until the wheat, via a sale, trade, bargain or contract (or an intention to enter into such an activity as manifested by shipment) exchanges hands and begins a movement over which the original producer no longer has control—in other words, until it is marketed. In the case of wheat used for feed, seed and food on the farm there is not even the intention to move it, either intrastate or interstate. It remains static.

To say that farmers by consuming their excess wheat as feed, seed or food, are competing with commercial products, is an argument too absurd to be taken seriously. For example, because A manufactures an X radio A cannot use an X radio in his own home but must buy a Y radio in order that Y may continue in business—and, of course, Y for his own home use must buy an X radio to keep A in business. Neither party can have the benefit or use of his own product. Certainly the doctrine expounded in the *Wrightwood Dairy Company* case was never meant to create such an anomalous situation.

The case of *Cloverleaf Butter Company vs. Patterson*, 315 U. S., 148, can be briefly disposed of. The production restricted in that case was the production of an

adulterated processed food bringing such production under the federal police power. The issue in that case, moreover, was whether a state law had precedence over a federal statute, and the decision did not revolve on the question to be considered herein. The opinion, however, states:

"But once the material was definitely *marked for commerce* by acquisition of the manufacturer it passed into the domain of federal control."

In no sense can it be said that the production of the butter acquired from the producer for processing was restricted, but only that portion which was manufactured after acquisition by the manufacturer from the original producer. This was done in the interests of health, and not then until it was "marked for commerce." The presumption naturally would follow that the manufacturer might destroy his own product without penalty before so marked, and thus forestall federal regulation.

The so-called *Shreveport* case, 234 U. S., 342, cited by Government Counsel, announces a now familiar principle and one with which we have no quarrel; for, as pointed out in the *Wrightwood Dairy* case (*supra*) the theory is that some form of commerce must materialize before the powers of the interstate commerce clause can be invoked. In the question now presented for reargument, as we have pointed out, commerce in the accepted sense of the word has not taken place. The wheat on the farm grown for feed, seed and food is still under the control of the farmer and has not yet moved into any channel of trade. It is still private property until the farmer disposes of

it in some manner. See *Santa Cruz Co. vs. National Labor Relations Board*, 303 U. S., 453, at page 466, where Mr. Chief Justice Hughes said:

"It is also clear that where federal control is sought to be exercised over activities which separately considered are intrastate, it must appear that there is a close and substantial relation to interstate commerce in order to justify the federal intervention for its protection. However difficult in application, this principle is essential to the maintenance of our Constitutional system. The subject of federal power is still 'commerce,' and not all commerce but commerce with foreign nations and among the several States. The expansion of enterprise has vastly increased the interests of interstate commerce but the constitutional differentiation still obtains. *Schechter Corporation vs. United States*, 295 U. S., 495, 546. 'Activities local in their immediacy do not become interstate and national because of distant repercussions.' *Id.*, 554.

To express this essential distinction 'direct' has been contrasted with 'indirect,' and what is 'remote' or 'distant' with what is 'close' and 'substantial.' Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as 'interstate commerce,' 'due process,' 'equal protection.' In maintaining the balance of the constitutional grants and limitations, it is inevitable that we should define their applications in the gradual process of inclusion and exclusion."

Consequently we can agree with the conclusions arrived at in the *Wrightwood* and *Shreveport* cases and still recognize the fact that there are limitations upon the power of the federal government to intervene in cases where the relationship of the activity in question is not close and substantial to interstate commerce. We submit that where "commerce" has yet to begin, the relationship to interstate commerce is not only indirect and remote but has not yet been called into existence.

The case of *United States vs. Darby*, 312 U.S., 100, confirms our belief in the principles we have announced above. On page 115 of that decision Mr. Justice Stone said:

"The motive and purpose of the present regulation are plainly to make effective the congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the states from and to which the commerce flows. The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the constitution places no restriction and over which the courts are given no control Whatever their motive and purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary power conferred on Congress by the Commerce Clause. . . ."

It is our contention that the amendment of May 26, 1941, does infringe upon a constitutional prohibition—the unwarranted invasion of a private right of property.

To say that feed, seed and food consumed on the farm where it has been raised is a form of competition with commercial products is a *reductio ad absurdum* of the theory of competition. On the projected "mathematical formula" of Government Counsel, we might all well starve to death in order to keep alive the struggle for existence. But on page 113 of *United States vs. Darby* (*supra*) Mr. Justice Stone laid down the distinction upon which we have dwelt. He said:

"While manufacturing is not of itself interstate commerce the shipment of manufactured goods interstate is such commerce and the prohibition of such shipment by Congress indubitably a regulation of the commerce." (Italics supplied.)

The emphasis is on the "shipment" of the manufactured goods into the channels of commerce—interstate or intrastate, or both; but until such movement occurs there is no cause to invoke the power of the interstate commerce clause.

The cases that we have been at some length distinguishing from the present case are deemed by us the principal ones which Government Counsel have cited. Of the many others cited, if the distinctions hold good for the ones we discussed they will hold good for the others. None of them—and this can be said with firm conviction—go so far in the extension and application of the Commerce Clause of the Constitution as Government Counsel now ask this Court to go. All of the decisions of this Court in the case cited recognize, respect and uphold a limitation—a constitutional limitation—upon the power

of Congress to regulate activities which in purpose and effect are separate and apart from Commerce.

In conclusion, we refer the Court to the decision of *Labor Board vs. Jones & Laughlin*, 301 U. S., 1, cited by Government Counsel. We deem it unnecessary to point the distinction between that case and the instant one, other than to state that the consumption of the wheat "on the farm of the producer" is not a commercial activity, intrastate or interstate, and does not burden, obstruct, or affect the "balanced flow," the "orderly marketing" or the "price structure" of wheat in interstate commerce sufficiently to justify the application of the Commerce Clause.

In *Labor Board vs. Jones & Laughlin*, at page 37, speaking through Mr. Chief Justice Hughes, this Court warns the Congress against a too liberal exercise of its power to invoke the Commerce Clause, stating:

"Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government."

To extend the Commerce Clause to the degree advocated by Government Counsel in this case would not only effectually approach a centralized government but could eventually lead to absolutism by successive nullifications of all Constitutional limitations. The requested misap-

plication of the Commerce Clause to the instant case we confidently believe this Court will never sanction.

Respectfully submitted,

WEBB R. CLARK,
HARRY N. RUTZOHN,
ROBERT S. NEVIN.

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Supreme Court of the United States

October Term, 1941

CHARLES ELMER DODDLEY
CLERK

No. 1,060

59

CLAUDE R. WICKARD, et al,
Appellants

-vs-

ROSCOE C. FILBURN,
Appellee

**PETITION FOR LEAVE TO FILE THE AMICUS CURIAE
BRIEF HERewith AND HEREIN SUBMITTED AND FOR
ORAL ARGUMENT IN THE ABOVE ENTITLED CAUSE.**

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Supreme Court of the United States

October Term, 1941

No. 1,080.

CLAUDE R. WICKARD, et al,
Appellants

-vs-

EOSCOE C. FILBURN,
Appellee

PETITION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND FOR ORAL ARGUMENT.

To the Honorable, the Supreme Court of the United States:

William Lemke, and associate counsel, petition this honorable court for leave to file the Amicus Curiae brief, herewith and herein submitted, in the above entitled cause.

This for the reason that petitioners are counsel in some thirty cases, in different states, involving the identical subject matter that is involved in the above entitled cause. The same questions of law and of the constitutionality of Public Law No. 74, and of Sections 331 to 339 inclusive of the Agricultural Adjustment Act as amended, are involved in all of these cases.

Petitioners call the court's attention to the fact that its decision in the above entitled cause will effect, and may in fact determine its decision, in all of the cases that petitioners are interested in.

The questions involved in these cases are of great public concern and interest. They are national in scope, and effect the agricultural activities of millions of farmers. They in-

volve millions of dollars of penalties, which we feel have been and are being unlawfully collected under an unconstitutional law.

It is for this reason that petitioners also respectfully request the court to grant them thirty-minutes for oral argument on the constitutionality of Public Law No. 74, and Sections 331 to 339 inclusive, of the Agricultural Adjustment Act as amended, and to grant to the government's counsel the same amount of additional time if they desire it.

Petitioners feel that if they are permitted to participate by filing the Amicus Curiae brief herewith and herein submitted, and are granted thirty minutes for oral argument in the manner requested above, that it will aid the court in getting a clear picture of the questions of law and constitutionality involved, and will assist them in arriving at a final decision, which will dispose of all of the questions involved in the above entitled cause. This will eliminate the further litigation of cases involving the same subject matter.

Respectfully submitted,

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Supreme Court of the United States**October Term, 1941**

No. 1,080.

CLAUDE R. WICKARD, et al,
Appellants**-vs-****ROSCOE C. FILBURN,**
Appellee

PETITIONERS' AMICUS CURIAE BRIEF

STATEMENT OF CASE

This case arises under Federal laws. It arises under the unconstitutional Public Law 74, and the unconstitutional sections 331 to 339, inclusive, of the Agricultural Adjustment Act of 1938, as amended. The provisions of these laws attempt to control intrastate agricultural activities and production, under the guise of regulating interstate commerce.

They do not deal with interstate commerce, nor even with intrastate commerce, as such, but deal solely and exclusively with intrastate production of wheat and farming activities.

Their aim is, the control and curtailment of the production of wheat. They do not operate on interstate commerce, interstate dealers, or even on intrastate dealers, but aim to control the farming activities of the farmer himself. They invade the rights of the state, attempting to regulate its internal affairs; they invade the private home of the farmer within the state, by directing him what he may plant, and

what he may not plant; what he may produce, and what he may not produce.

If held constitutional, they will divide and set community against community, state against state, and section against section. They may be the rock upon which the sisterhood of forty-eight states will ultimately perish.

We shall show that the production of wheat has no connection with interstate commerce, and that the statements of facts and conclusions contained in said laws, are erroneous, incorrect and untrue. We shall, however, discuss the legal propositions first.

CONSTITUTIONAL QUESTIONS INVOLVED.

I.

Violate Article 1, Section 8.

These laws are repugnant to Article 1, Section 8, in that they do not regulate commerce with foreign nations and among the several states, but in fact interfere with, hinder and tend to destroy said commerce. We repeat that their object is not to regulate commerce, but to control intrastate production and intrastate farming activities. They curtail and restrict the production of an essential food product, wheat, to the detriment of the general welfare of the nation. They cannot be sustained as constitutional under any decision of the Supreme Court.

It must be clear that these acts do not only interfere with Interstate Commerce, but tend to destroy it. If I raise ten sheep and my family consumes five and I sell five, then there are five for intra or interstate commerce, but if I am compelled to reduce the number of sheep I raise to five, then I have destroyed the commerce in the other five, be it state or interstate.

It is equally clear that if I raise one hundred bushels of wheat and my family consumes fifty, that then I have fifty bushels for commerce, but if I am restricted to only fifty bushels, then I have none whatever for either state or interstate commerce. These facts are so self-evident that they need no further explanation.

"The Act invades the reserved right of the states. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the Federal Government * * *"

From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such

as are conferred, are reserved to the states or to the people. To forestall any suggestion to the contrary, the 10th amendment was adopted. The same proposition otherwise stated, is that powers not granted are prohibited. None to regulate agricultural production is given, and therefore legislation by Congress for that purpose is forbidden." *United States v. Butler*, 297 U. S. 1. *Linder v. United States*, 268 U. S. 5.

"When defendants had made their purchases, whether at the West Washington Market in New York City or at the railroad terminals serving the City, or elsewhere, the poultry was trucked to their slaughterhouses in Brooklyn for local disposition. The interstate transactions in relation to that poultry then ended. Defendants held the poultry at their slaughterhouse markets for slaughter and local sale to retail dealers and butchers who in turn sold directly to consumers. Neither the slaughtering nor the sales by defendants were transactions in interstate commerce. *Brown v. Houston*, 114 U. S. 622, 632, 633; *Public Utilities Comm'n v. Landon*, 249 U. S. 236, 245; *Industrial Association v. United States*, 268 U. S. 64, 78, 79; *Atlantic Coast Line v. Standard Oil Co.*, 275 U. S. 257, 267." *Schechter Corp. v. United States*, 295 U. S. 495.

If these acts are constitutional, then Congress can prohibit a carpenter from making a single lead pencil and either using it himself, or giving it to his wife as a birthday present. Then Congress can direct the number of eggs that a hen is allowed to lay per week. It can compel the farmer to dispose of, or give to the Secretary of Agriculture, any hen that lays more than three eggs per week. This, because some lead pencils and some eggs do enter interstate commerce.

If this law is constitutional, then Congress can prohibit any farmer from raising any wheat and using it for his own family and his own livestock. Absurd as this may seem, that is exactly what the Department of Agriculture is attempting to do under these acts. It is an attempt to penalize the farmer for raising wheat for seed, feed or for his family's consumption. It makes that a crime which is a virtue, it attempts to penalize and punish the farmer for feeding the nation.

In fact these acts do not attempt to regulate interstate commerce. It is their purpose to curtail interstate commerce of domestic wheat. It attempts to bring about this result not by regulating interstate commerce, but by controlling acres of production. Surely an acre of land cannot be made the subject of regulating interstate commerce. The acre itself does not walk across boundary lines. It is true that some of its soil occasionally takes an interstate excursion in a dust storm, but as far as we know the Department of Agriculture has not yet been able to regulate that.

The case of *Mulford v. Smith*, 307 U. S. 38, does not sustain these laws. The question before the court there was quite different from the one here under consideration. In that case, the farmer could sell all the tobacco he wanted, he could smoke all he wanted, publicly or privately, without interference or penalty. While in the case here at bar, the farmer is not permitted to use the wheat he produces by his own labor, on his own farm, for any purpose whatsoever, until he pays the penalty. He cannot sell it, he cannot give it away. He cannot feed it to his livestock, he cannot feed it to his poultry. He cannot grind it into flour and bake it into bread for himself and his family.

"The statute does not purport to control production. It sets no limit upon the acreage which may be planted or produced, and imposes no penalty for the planting and producing of tobacco in excess of the marketing quota. It purports to be solely a regulation of interstate commerce, which it reaches and affects at the throat where tobacco enters the stream of commerce, the marketing warehouse. * * *

The act did not prevent any producer from holding over the excess tobacco produced or processing or storing it for sale in a later year." *Mulford v. Smith*, 307 U. S. 38.

The *Mulford* case gives little comfort to those who would destroy constitutional government by invading the private

homes of farmers, under the guise of regulating interstate commerce. That case deals only with dealers in interstate commerce. May we also suggest to the court that they read the dissenting opinion by Justice Butler, in that case. This will throw additional light on the majority opinion.

In no case, decided by the Supreme Court to date, was there an attempt made to prohibit the farmer from producing an essential food product and penalizing him for doing so. In all of the cases decided by the Supreme Court, except one, the regulation was that of interstate dealers or buyers. In the case of United States v. Rock Royal Co-Operative, 307 U. S., the Court says:

"Each defendant is a dealer handling milk moving in interstate commerce."

The only exception to the above cases is the case of United States v. Wrightwood Dairy Co., 86 Law. Ed. 431, but even in that case, however much we may question its soundness, the act dealt solely and exclusively with intrastate dealers in milk. In that case the court virtually holds that the tail wags the dog. That forty per cent of interstate commerce control sixty per cent of intrastate commerce. If that is correct, then one-half of one per cent interstate commerce, could control ninety-nine and one-half per cent of intrastate commerce.

While we cannot follow that logic, yet that case does not decide the issues here. There it was not attempted to penalize the producer for milking a cow and drinking the milk, or letting the calf suck the cow; or even of milking the cow and giving it to his children. It did not attempt to make that a crime. The aim was, to control the intrastate buyer, and the court concluded that he indirectly competed with interstate commerce.

"The extent of regulation depends on the nature and character of the subject and what is appropriate to its regulation. The powers possessed by government to deal with a subject are neither *inordinately enlarged or greatly dwarfed* because the power to regulate interstate commerce applies." *Wilson v. New*, 243 U. S. 332 (p. 346.) *Hammer v. Dagenhart*, 247 U. S. 251.

Congress cannot legally annihilate the constitution—the fundamental law of the land—under the guise of proceeding under the interstate commerce clause. We submit that both Congress and the courts have gone to the extreme limit in that direction. The time has arrived for the pendulum to return.

Not even the mistaken notions of necessity—of surpluses—of the Department of Agriculture can annul the constitution. The people alone can alter that instrument. It is not for Congress or the courts to amend the constitution by reading something into the interstate commerce clause that is not there.

"Not even the changes of the remedy may be pressed so far as to cut down the security of a mortgage without moderation or reason or in a spirit of oppression. Even when the public welfare is invoked as an excuse, these bounds must be respected." *Worthen Co. v. Kavanaugh*, 294 U. S.

The bounds of the whole constitution must be respected. One part, or one clause, must not be used as an excuse to annihilate every other part of the instrument. The constitution must be read, interpreted and upheld as a whole—the whole instrument is flexible to be sure, but it is not self destructive. It does not contain the germ—a clause—for its own annihilation.

II.

Violate Article 1, Secs. 7 and 9

If the penalty of 49c a bushel on so-called "excess wheat" is a tax, then, we submit, revenue bills must originate in the House of Representatives. Public Law No. 74, originated in the Senate. If it is a tax, then the money collected under it, should be paid into the general fund of the Treasury, and drawn out only by appropriations made by law.

If it is a penalty, as the act says it is, then it is an ex post facto law. In either case, it is unconstitutional. The constitution is our authority for that.

If Congress can punish a farmer for planting wheat eight months before the law is passed, by penalizing him, then it can also punish him by putting him in jail. The degree of punishment is in the discretion of Congress, but the Constitution says that these laws cannot be ex post facto. Neither can Congress make the planting of wheat, or farming operations, entirely within a state, an unlawful or criminal act. This is beyond its constitutional power.

Section 9, Article 1, of the Constitution further says:

"No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another."

The purpose of this provision is clear. The framers of our Constitution prohibited Congress from giving one state preference over another. Each state is free to compete with every other state in industry, in agriculture, and in manufacture. As far as intrastate activities are concerned, no state can be limited, restrained, or discriminated against by the Federal Government.

Yet, the act here under consideration, would freeze production of wheat in each state. This, in accordance with its past production. It, in fact, says to the State of Vermont, and to other states: "You cannot, in the future, produce much wheat, because you have never produced much before. If Congress can do this, then it can do also the opposite, and say to the State of Kansas: "You have produced enough wheat in the past, you cannot produce it in the future."

If Congress can do this in the case of wheat, then it can do it with every other agricultural commodity, or manufactured article. Admit this doctrine, and constitutional government ceases to exist.

III.

Violate Article 4, Section 2.

The acts here in question, violate Article 4, Section 2, in that they deny the citizens of each state all the privileges and immunities of citizens of the several states. They attempt to freeze a certain class of citizens in a certain business, farming, into a status quo. The citizens of each state have a right to compete with the citizens of every other state in the production of agricultural products. That right cannot be taken away from them, constitutionally, by Congress. The citizens of each state have a right to change their vocation, or occupation, from one to another within the state, without asking the Secretary of Agriculture for his permission: To hold otherwise, is to be intellectually dishonest with ourselves and with our form of government.

IV.

Violate Article 1, Section 1.

These laws, violate Article 1, Section 1, in that they give to the Secretary of Agriculture, legislative power. They give

to him, power by rules and regulations, to make laws—to legislate. That power is vested in Congress alone.

Section 336 provides:

“Between the date of issuance of any proclamation of any national marketing quota for wheat and June 10th, the Secretary shall conduct a referendum, by secret ballot, of farmers who will be subject to the quota specified therein, to determine whether such farmers favor or oppose such quota. * * *

Congress fails to furnish the Secretary a yardstick as to what farmers are subject to the quota. The Secretary ruled that only farmers who planted more than fifteen acres of wheat, the previous year, had a right to vote. Yet, many of these farmers, who he denied the right to vote, he now attempts to penalize for planting excess acreage.

It undoubtedly was under similar rules and instructions, that the Secretary provided shoe boxes, rather than ballot boxes, and provided that the 136,000, that are on his payroll, should, in the majority of cases, be judges at the referendum election. There was little secrecy about the casting of the ballots, but plenty of secrecy in the counting.

It was, undoubtedly, under instructions and rules by the Secretary, that the franked envelopes, containing letters directing the farmer how to vote, were sent out by the county committees. Such a procedure is not only an unlawful delegation of legislative powers, but is a fraud on its face. It must not go unchallenged, or continue to grow. We have a right to demand a higher standard of public morals, and public honesty in the conduct of these elections.

“Congress is not permitted by the Constitution to abdicate or transfer to others, the essential legislative functions with which it is vested.” *Panama Rfg. Co. vs. Ryan*, 293 U. S. 388.

“We pointed out, in the *Panama Company* case that the Constitution has never been regarded as denying to Con-

gress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained." *Schechter Corp. v. United States*, 295 U. S. 495.

Less than twenty per cent of the six million farm families plant wheat in a given year. It is not always the same farmer who plants wheat. Agriculture is in a constant flux. The kind of products grown by the individual farmer changes from year to year depending upon conditions far beyond the control of the Department of Agriculture.

The laws herein complained of attempt to give to a class, and to a small group of that class—less than one-tenth of all the farmers—the power to legislate, to put into operation a policy of restricting production of an essential food product—this by a referendum vote of that small group, and yet binding upon all of us. We submit that this is not a ministerial power, but a legislative power. A power that effects the entire nation.

If this can be done in the field of agriculture, it can be done in the field of manufacture—in all industry. Then Congress can delegate to any group the power to curtail production by a referendum vote. This in utter disregard of the welfare of the nation, or the want and suffering of the people. It can give to any group the power to penalize and imprison if its policy is not followed. Such a policy is a total stranger to our constitution. It is foreign to "our way of life." It cannot be sustained.

V.

Violate Article 5 of Amendments

These acts violate Article 5 of amendments to the Constitution, in that they attempt to confiscate and deprive the plaintiffs of property without due process of law—without just compensation. Plaintiff's wheat, here in question, was planted eight months before Public Law No. 74 was passed. That law is not only unconstitutional, because it attempts to control production, but unconstitutional because it is retroactive. It attempts to make that a wrong, which is not a wrong; and attempts to do so in a retroactive manner.

It has been held unconstitutional, as far as the 1941 crop is concerned, in the recent decision of the District Court of Ohio. In the case of *Roscoe C. Filburn v. Carl R. Helke*, but we submit it is wholly unconstitutional, and not only as to the 1941 crop. We insist that it does not only violate practically every section of the constitution, but violates the spirit and the letter of the entire constitution, including the general welfare clause.

Certainly the production of wheat, on one's own farm, entirely within one state, cannot be prohibited or controlled by a penalty tax, under any act of Congress. That is the whole intent and purpose of the "penalty tax", in the acts here in question. It is true that an attempt is made to do this by subterfuge, by referring to interstate commerce. The farmer cannot be classified occupationally as a dealer in inter or intrastate commerce, or as a dealer in lottery tickets, or adulterated food, or white slave traffic, or stolen automobiles, or kidnapped persons. He is engaged in an honorable and lawful occupation—feeding the nation.

In the case of *Louisville Bank v. Radford*, 295 U. S. 555, Justice Brandeis said:

"The province of the Court is limited to deciding whether the Frazier-Lemke Act as applied has taken from the Bank without compensation, and given to Radford, rights in specific property which are of substantial value. *** As we conclude that the Act as applied has done so, we must hold it void. For the Fifth Amendment commands that however great the Nation's need, private property shall not be thus taken even for a wholly public use without just compensation."

VI.

Violate Articles 7 and 8 of Amendments

These acts violate Articles 7 and 8 of amendments of the Constitution, in that they attempt to deprive the plaintiffs of their property, by placing a lien, not only upon the excess wheat, but upon all of the wheat produced during the crop year of 1941. This lien is not placed upon the crop after a trial by jury, but is placed thereon, in an arbitrary manner, by the statute, without trial and without an opportunity to be heard.

The 49c penalty amounts to confiscation of the plaintiffs' wheat. At no time since 1930, have the farmers received cost of production for their wheat. From 1930 to 1940, they received from sixty-nine to seventy-five per cent parity prices. They fed the nation at a loss. They donated their services, and the services of their wives and children to the nation,—the honeyed words and the camouflage of the department notwithstanding. In place of giving them a one-hundred per cent parity, or cost of production, Congress has been imposed upon, and gave them an unconstitutional penalty tax, and the one hundred thirty-six thousand Bellweathers on the payroll of the Department of Agriculture cannot continue to fool us.

VII.

Violate Articles 9 and 10 of Amendments

The acts here under consideration, violate Articles 9 and 10 of the amendments of the constitution, with a boldness not

heretofore attempted in any act of Congress, the attempt to usurp the power and rights expressly and absolutely retained by the people, and reserved to the states. If, under the guise of interstate commerce, Congress can go into the states and fine farmers for raising wheat under a law, eight months after the wheat had been planted, then the end of our constitution has arrived. If Congress can do this, then it can tell the farmer how many babies he can raise, because ultimately they will grow up and cross the state boundary line. Such an absurd doctrine this court will not follow.

The reservation to the states respectively, only means the reservation of the rights of sovereignty, which they respectively possessed before the constitution of the United States, and which they had not parted from by that instrument. Any legislation by Congress, beyond the limits of the power delegated, would be trespassing upon the rights of the states or the people, and would not be the supreme law of the land, but null and void. *Gordon v. United States*, 117 U. S. 697. See also, *United States v. Williams*, 194 U. S. 295.

VIII.

Repugnant to Article 13, Section 1.

These laws are repugnant to Article 13, Section 1 of amendments to the Constitution, because they virtually make a slave out of the farmer. It is required, under the act, to pay the penalty, or give the so-called "excess wheat" to a Secretary of Agriculture for nothing. It takes labor to produce wheat. If, after it is produced, somebody else can take it, or exact forty-nine cents a bushel from you for raising it, it seems to us that constitutes involuntary servitude. There is no need in enlarging upon that subject.

LET US GET THE CORRECT FACTS.

Legislative Findings?

Let us keep the record straight; designating legislative findings does not make those findings true. Most of the facts stated as facts in Section 331 of the Agricultural Adjustment Act, are not facts, they are incorrect statements and erroneous conclusions. They were written by the attorneys of the Department of Agriculture, who prepared the bill, and Congress adopted them. *Congress had a right to rely upon them, but, unfortunately, they are not correct, but erroneous.*

It is not true that wheat or flour flows almost entirely through instrumentalities of interstate and foreign commerce, from producers to consumers. The reverse is the truth—the bulk of it remains in intrastate commerce. *Thirty-two states, and the District of Columbia consume more wheat and flour than they produce. Only sixteen states produce more than they consume, and of those sixteen, only ten in quantity. Thirty-one per cent of all the wheat raised never leaves the farms on which it is produced. It is used for seed and feed for livestock. An amount equal to sixty-eight per cent is consumed by and within the states. See tables 1, 2 and 3, and explanation in appendix hereto.*

The reports and records of the Department of Agriculture, the Bureau of Census, and the Department of Commerce show that we have not had an abnormal supply of wheat since 1930, and prior thereto. Therefore, it could not have been a burden upon interstate and foreign commerce. Again, common horse sense tells us, as well as the evidence, that an abundant crop stimulates interstate commerce. You cannot assist interstate commerce by curtailment of essential food products. Since there was no abnormal excess, the statements made in Section 331, that it overtaxed the facilities of

interstate commerce and foreign transportation, are incorrect. See tables 1, 2 and 3 and explanation in appendix hereto.

Again, prices are depressed by price manipulation, and not by interstate commerce. The wheat trade has been well organized, and, as far as being orderly, it has been quite orderly—in fact, it has been a little too orderly and submissive to price manipulation. If there have been any abnormally deficient supplies, that has been due to the distressed short-sightedness of the Department of Agriculture, and not due to the farmer producing the food of a nation. Two erroneous statements never make a correct one.

In paragraph 3 of Section 331, a lot of high sounding phrases are used which mean really nothing. They are intended to becloud and muddle. They are intended to make the unthinking believe that the millennium is about to come. They are self-serving declarations. The truth is, that this part of the Agricultural Adjustment Act has performed no miracles. Of course, there has been an increase of prices since 1930 and 1932, but take ten years before 1932, and then ten years from 1932, and you will find that the income from agriculture was some ten billion dollars greater during ten years back from 1932, than it was from the ten years forward from 1932, in spite of all the camouflage and misrepresentation.

The last two paragraphs of section 331 remind us of boyhood orations in high school. They are just a jumble of words and erroneous conclusions, born of desire, rather than backed up with facts. We submit it is not necessary to violate the Constitution in order to give agriculture its just dues. Legislative findings, when proven to be untrue by facts, cannot be made the basis of sustaining unconstitutional acts.

CONCLUSION.

We submit there has been a growing tendency to disregard the rights of states, and to centralize power in Washington.

We deny, most emphatically, that this has been for the good of the nation. We submit that the struggle in the future will be to recover some of those rights, so readily surrendered by the people to the federal government. Power always wants more power, and we are no exception to the rule, but let us come back to the Constitution.

"The powers the people have given to the general government are named in the Constitution, and all not there named, either expressly or impliedly, are reserved to the people and can be exercised only by them or upon further grant from them." United States v. Williams, 194 U. S. 295.

We challenge the Department of Agriculture to point out to us under what provisions of the Constitution Congress has the right to give to him the power to control and regulate the production of wheat. No such power exists, therefore Congress cannot give it to him, or even delegate it to him.

The states within their spheres are as independent of the general government, as the general government within its sphere is independent of the states. Both must respect the federal constitution. Buffington v. Day, 11 Wall. 124.

Respectfully submitted,

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APPENDIX

TABLE 1 - WHEAT

Official Returns of May 31, 1941, Wheat
Referendum; Number of Wheat Farms; Number of Wheat
Allotments; Number of Wheat Payees and Percentages,
By States.

ANALYSIS

- 1—This table groups the 33 "deficit" states, including the District of Columbia, in one category and the 16 "surplus" states in the other.
- 2—The states are arranged in descending order as total consumption of wheat, by percentage, exceeds production.
- 3—The number of votes cast, wheat allotments and wheat payees are compared with and keyed to column 4 - the number of wheat farms (on which any wheat was threshed) according to the United States Census 1940.
- 4—It is to be noted that there are 1,385,300 wheat farms - a total of 1,747,000 wheat allotments and 1,523,393 wheat payees in the United States and a total of 559,630 votes cast in the May 31, 1941 wheat referendum.
- 5—Therefore for each 100 wheat farms only 40.4 farmers voted in the May 31st Referendum while 56.3 farmers were disfranchised by Public Law 74 - 77th Congress and only 3.3 farmers who had a right to vote, did not vote.
- 6—On the other hand 47.4 per cent of all wheat farms are in the 33 "deficit" states and for each 100 wheat farms only 17.5 farmers voted in the May 31st Referendum - 55.2 farmers were disfranchised and 27.3 farmers who had a right to vote, did not vote.
- 7—In the "surplus" states, 52.6 per cent of all wheat farms are located and for each 100 farms, 61 farmers voted in the May 31st Referendum and 57.3 farmers were disfranchised. This accounts for 118.3 farmers for each 100 wheat farms.
- 8—In the 33 "deficit" states there were 89.5 wheat allotments for each 100 wheat farms while in the 16 "surplus" states there were 159.1 wheat allotments for each 100 wheat farms - and for the United States 126.1.
- 9—The number of wheat payees in the "deficit" states equal 72.8 payees for each 100 wheat farms - 143.5 in the "surplus" states and only 109.9 for the United States.

TABLE I—WHEAT: OFFICIAL RETURNS OF MAY 31, 1941 WHEAT REFERENDUM
 Number of Farms Threshing Wheat; Number of Wheat Allotments; Number of Wheat Payees and Percentages, by States

| Number of Farms Threshing Wheat; Number of Wheat Allotments; Number of wheat Payees and Percentage of Wheat Farms | | | | | | | | | | | |
|---|---|---------|---------|--|----------------------------|-------------------|-----------------------------------|--|---|---|---|
| STATES | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) |
| | NUMBER OF VOTES CAST May 31st, 1941. | | | Number Wheat Farms 1940 Census | NUMBER WHEAT ALLOTMENTS | | Number of Payees "WHEAT" | Votes cast as percentage of Wheat Farms | Payees as percentage of Wheat Farms | Total Wheat Allotments as percent- age of Wheat Farms | Wheat Allotments under 15 acres as percent- age of Wheat Farms |
| | Yes | No | Total | | Total | Under 15 Acres | | | | | |
| 1 Vermont..... | 0 | 0 | 0 | 57 | 0 | 0 | 0 | 0. | 0. | 0 | 0 |
| 2 Alabama..... | 9 | 1 | 10 | 967 | 0 | 0 | 48 | 0.1 | 4.9 | 0 | 0 |
| 3 Maine..... | 0 | 0 | 0 | 509 | 0 | 0 | 0 | 0. | 0. | 0 | 0 |
| 4 Arkansas..... | 119 | 11 | 130 | 3,204 | 9,000 | 9,000 | 6,351 | 0.4 | 198.2 | 280.8 | 280.2 |
| 5 New Jersey..... | 107 | 211 | 318 | 4,141 | 1,000 | 1,000 | 881 | 7.6 | 21.2 | 24.1 | 24.1 |
| 6 Georgia..... | 163 | 89 | 252 | 29,911 | 3,000 | 3,000 | 551 | 0.8 | 1.8 | 10.0 | 10.0 |
| 7 New York..... | 1,067 | 909 | 1,996 | 26,825 | 19,000 | 14,000 | 6,901 | 7.4 | 25.7 | 70.8 | 52.1 |
| 8 Wisconsin..... | 167 | 6 | 173 | 18,856 | 21,000 | 21,000 | 16,865 | 0.9 | 89.4 | 111.3 | 111.3 |
| 9 South Carolina..... | 273 | 44 | 317 | 41,111 | 3,000 | 3,000 | 235 | 0.7 | 0.5 | 72.9 | 72.9 |
| 10 West Virginia..... | 289 | 161 | 450 | 16,223 | 1,000 | 1,000 | 1,430 | 2.7 | 8.8 | 6.1 | 6.1 |
| 11 North Carolina..... | 1,919 | 371 | 2,290 | 57,695 | 4,000 | 3,000 | 5,370 | 3.9 | 9.3 | 6.9 | 5.1 |
| 12 Tennessee..... | 934 | 463 | 1,397 | 35,305 | 11,000 | 3,000 | 10,840 | 3.9 | 29.6 | 31.1 | 8.4 |
| 13 Kentucky..... | 4,081 | 692 | 4,773 | 30,197 | 14,000 | 5,000 | 12,980 | 15.8 | 42.9 | 46.3 | 16.5 |
| 14 Pennsylvania..... | 2,648 | 3,703 | 6,351 | 81,325 | 55,000 | 37,000 | 33,261 | 7.8 | 40.8 | 67.6 | 45.4 |
| 15 Iowa..... | 3,783 | 636 | 4,419 | 21,601 | 31,000 | 23,000 | 33,935 | 20.4 | 157.0 | 143.5 | 106.4 |
| 16 California..... | 1,986 | 1,020 | 3,006 | 5,011 | 9,000 | 1,000 | 6,286 | 59.9 | 125.4 | 179.6 | 19.9 |
| 17 Arizona..... | 111 | 3 | 114 | 1,380 | 1,000 | 0 | 814 | 0.8 | 58.9 | 72.4 | 0. |
| 18 Nevada..... | 94 | 61 | 155 | 831 | 1,000 | 1,000 | 912 | 18.6 | 109.7 | 120.3 | 120.3 |
| 19 Virginia..... | 2,218 | 976 | 3,194 | 52,640 | 12,000 | 12,000 | 11,280 | 9.7 | 21.4 | 22.7 | 22.7 |
| 20 Michigan..... | 5,270 | 1,643 | 6,913 | 69,197 | 95,000 | 84,000 | 59,483 | 9.9 | 85.9 | 145.7 | 121.3 |
| 21 Maryland..... | 2,992 | 888 | 3,878 | 17,140 | 16,000 | 7,000 | 14,150 | 22.6 | 82.5 | 93.3 | 40.0 |
| 22 Missouri..... | 18,472 | 4,698 | 23,170 | 70,958 | 116,000 | 73,000 | 96,011 | 32.5 | 135.3 | 163.4 | 102.8 |
| 23 Texas..... | 15,009 | 1,001 | 16,070 | 26,387 | 59,000 | 3,000 | 70,272 | 60.9 | 366.3 | 223.5 | 11.3 |
| 24 Illinois..... | 25,502 | 9,720 | 35,222 | 63,363 | 105,000 | 58,000 | 86,601 | 55.5 | 136.6 | 165.7 | 91.5 |
| 25 Delaware..... | 805 | 76 | 881 | 2,829 | 3,000 | 1,000 | 3,740 | 31.1 | 132.2 | 106.0 | 35.3 |
| 26 Massachusetts..... | 0 | 0 | 0 | 38 | 0 | 0 | 0 | 0. | 0. | 0. | 0. |
| 27 Connecticut..... | 0 | 0 | 0 | 43 | 0 | 0 | 0 | 0. | 0. | 0. | 0. |
| 28 Rhode Island..... | 0 | 0 | 0 | 7 | 0 | 0 | 0 | 0. | 0. | 0. | 0. |
| 29 New Hampshire..... | 0 | 0 | 0 | 11 | 0 | 0 | 0 | 0. | 0. | 0. | 0. |
| 30 District of Columbia | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0. | 0. | 0. | 0. |
| 31 Mississippi..... | 0 | 0 | 0 | 79 | 0 | 0 | 0 | 0. | 0. | 0. | 0. |
| 32 Louisiana..... | 1 | 12 | 13 | 8 | 0 | 0 | 0 | 162.5 | 0. | 0. | 0. |
| 33 Florida..... | 0 | 0 | 0 | 0 | 0 | 0 | 0 | -0. | 0. | 0. | 0. |
| TOTALS DEFICIT STATES | 88,099 | 27,393 | 115,492 | 657,876 | 589,000 | 363,000 | 479,197 | 17.5 | 72.8 | 89.5 | 55.1 |
| 1 Ohio..... | 18,940 | 17,896 | 33,836 | 120,882 | 168,000 | 129,000 | 97,285 | 28.0 | 80.4 | 138.9 | 106.7 |
| 2 Colorado..... | 7,866 | 1,144 | 9,010 | 15,906 | 26,000 | 3,000 | 29,441 | 56.6 | 185.0 | 163.4 | 18.8 |
| 3 Minnesota..... | 20,614 | 3,282 | 23,896 | 81,167 | 111,000 | 76,000 | 96,092 | 29.4 | 118.3 | 136.7 | 93.6 |
| 4 Wyoming..... | 1,731 | 136 | 1,867 | 4,369 | 7,000 | 1,000 | 6,076 | 42.7 | 139.0 | 160.2 | 22.8 |
| 5 Utah..... | 6,560 | 368 | 6,928 | 12,310 | 17,000 | 12,000 | 12,247 | 56.3 | 99.5 | 138.2 | 97.5 |
| 6 Indiana..... | 20,340 | 10,839 | 31,179 | 75,411 | 122,000 | 89,000 | 87,866 | 41.3 | 116.5 | 161.7 | 118.0 |
| 7 New Mexico..... | 1,434 | 81 | 1,515 | 6,211 | 4,000 | 0 | 4,158 | 24.3 | 66.9 | 64.4 | 0. |
| 8 South Dakota..... | 28,424 | 2,056 | 30,480 | 40,337 | 85,000 | 23,000 | 115,577 | 75.5 | 286.5 | 210.7 | 57.0 |
| 9 Oklahoma..... | 31,562 | 7,712 | 39,274 | 51,250 | 97,000 | 18,000 | 88,246 | 76.6 | 172.1 | 189.2 | 35.1 |
| 10 Oregon..... | 5,555 | 260 | 5,815 | 14,734 | 16,000 | 2,000 | 15,996 | 39.4 | 108.5 | 108.5 | 13.5 |
| 11 Nebraska..... | 33,206 | 7,224 | 40,430 | 58,212 | 94,000 | 23,000 | 115,815 | 69.4 | 198.9 | 161.4 | 39.5 |
| 12 Idaho..... | 12,061 | 764 | 12,845 | 22,795 | 31,000 | 10,000 | 25,672 | 56.3 | 112.6 | 135.9 | 43.8 |
| 13 North Dakota..... | 66,253 | 3,708 | 69,961 | 65,815 | 129,000 | 7,000 | 138,783 | 106.2 | 210.8 | 196.0 | 10.6 |
| 14 Washington..... | 14,394 | 990 | 15,384 | 12,668 | 16,000 | 12,000 | 11,369 | 121.4 | 89.7 | 126.3 | 94.7 |
| 15 Kansas..... | 81,398 | 20,568 | 101,966 | 100,240 | 186,000 | 9,000 | 157,831 | 101.7 | 157.4 | 185.5 | 8.9 |
| 16 Montana..... | 18,112 | 1,640 | 19,752 | 25,192 | 49,000 | 3,000 | 41,742 | 78.4 | 165.6 | 194.5 | 11.9 |
| TOTALS, SURPLUS STATES | 365,470 | 78,668 | 444,138 | 727,463 | 1,158,000 | 417,000 | 1,044,196 | 61.0 | 143.5 | 159.1 | 57.3 |
| TOTALS, UNITED STATES | 453,569 | 106,061 | 559,630 | 1,385,300 | 1,747,000 | 780,000 | 1,523,393 | 40.4 | 109.9 | 126.1 | 56.3 |

TABLE II - WHEAT

Production and Disappearance by Uses, by States—
 Five year average for Period 1931-'32 to 1935-'36; Mill
 grindings by States and uses as Percentage of Production.

ANALYSIS

- 1—This Table groups the 33 "deficit" states, including the District of Columbia, in one category and the 16 "surplus" states in the other.
- 2—The states are arranged in descending order as total consumption of wheat, by percentage, exceeds production.
- 3—In this 5 year period, domestic consumption of wheat exceeded production by 1,397,000 bushels a year.
- 4—In the 33 "deficit" states total consumption of wheat exceeded production by 261,957,000 bushels a year.
- 5—In the 16 "surplus" states, production of wheat exceeded consumption by 260,560,000 bushels a year.
- 6—The 260,560,000 bushels of surplus from the 16 "surplus" states is shipped into the 33 "deficit" states, therefore about 260,560,000 bushels out of a total of 680,603,000 bushels or only about 38.2 per cent of our total production of wheat flows in the channels of Interstate Commerce.
- 7—This would indicate that about 61.8 per cent of our wheat production is consumed in the states where produced, or Intrastate Commerce.
- 8—We know that 37.3 per cent of all wheat produced in the 33 "deficit" states is used for feed and seed and therefore for all practical purposes, does not leave the farm on which it is produced.
- 9—In the 16 "surplus" states, 28.5 per cent of the wheat produced is used for feed and seed and for the United States 30.8 per cent.
- 10—Mill grindings in the 16 "surplus" states exceeds consumption, as food, by about 150,925,000 bushels of wheat.
- 11—Mill grindings in the 33 "deficit" states is about 164,719,000 bushels of wheat less than consumption as food.
- 12—This would indicate that about 109,635,000 bushels of wheat - as wheat - and about 150,925,000 bushels of wheat - as flour - is shipped annually from the "surplus" states to the "deficit" states, totalling 260,560,000 bushels or 38.2 per cent of our total production.
- 13—Consumption as food about equals the difference between total consumption and feed and seed used on the farm.

TABLE II--WHEAT: Production and Disappearance, by uses, by States: Five Year average for Period 1931-'32 to 1935-'36;
Mill Grindings, by States and Uses as Percentage of Production.

| STATES | (1) Total Production 1,000 Bushels | (2) Total Consumption 1,000 Bushels | (3) Consumption as Percentage of Production | (4) Consumption in excess of Production 1,000 Bushels | (5) Mill Grindings 1,000 Bushels | (6) Number of Mills 1946 | (7) Seed 1,000 Bushels | (8) Feed 1,000 Bushels | (9) Feed and Seed 1,000 Bushels | (10) Feed and Seed as Percentage of Production | (11) Consumption as Food 1,000 Bushels | (12) Food Consumption as % of Production |
|------------------------------|--|---|--|---|--|--------------------------------------|---------------------------------|---------------------------------|--|---|---|--|
| 1 Vermont..... | 4 | 1,435 | 35,875.0 | 1,431 | | 0 | 0 | 69 | 69 | 1,725.0 | 1,366 | 94,150.0 |
| 2 Alabama..... | 60 | 11,632 | 19,386.7 | 11,572 | 401 | 0 | 8 | 91 | 99 | 165.0 | 11,533 | 19,221.6 |
| 3 Maine..... | 124 | 3,113 | 2,570.5 | 2,989 | 47 | 0 | 14 | 104 | 118 | 95.1 | 2,995 | 2,415.3 |
| 4 Arkansas..... | 552 | 9,144 | 1,656.7 | 8,592 | 762 | 1 | 103 | 751 | 854 | 154.7 | 8,290 | 1,501.8 |
| 5 New Jersey..... | 1,176 | 15,851 | 1,347.9 | 14,675 | 334 | 3 | 113 | 780 | 893 | 75.9 | 14,958 | 1,271.9 |
| 6 Georgia..... | 1,188 | 12,776 | 1,075.4 | 11,588 | 760 | 6 | 226 | 201 | 427 | 35.9 | 12,349 | 1,039.4 |
| 7 New York..... | 5,020 | 48,362 | 963.4 | 43,342 | 57,350 | 33 | 527 | 2,238 | 2,765 | 55.4 | 45,597 | 908.3 |
| 8 Wisconsin..... | 1,797 | 12,394 | 689.7 | 10,597 | 3,076 | 8 | 213 | 1,451 | 1,664 | 92.5 | 10,730 | 597.1 |
| 9 South Carolina..... | 1,238 | 8,066 | 651.5 | 6,828 | 309 | 6 | 205 | 283 | 488 | 39.4 | 7,578 | 612.1 |
| 10 West Virginia..... | 2,006 | 8,276 | 412.7 | 6,270 | 1,515 | 9 | 248 | 804 | 1,052 | 52.4 | 7,244 | 361.1 |
| 11 North Carolina..... | 4,731 | 15,445 | 326.5 | 10,714 | 4,462 | 36 | 593 | 946 | 1,539 | 32.5 | 13,906 | 293.9 |
| 12 Tennessee..... | 4,113 | 12,932 | 314.4 | 8,819 | 7,334 | 49 | 510 | 1,111 | 1,621 | 39.4 | 11,311 | 275.0 |
| 13 Kentucky..... | 4,671 | 13,052 | 279.4 | 8,381 | 6,203 | 56 | 580 | 1,044 | 1,633 | 34.9 | 11,419 | 244.4 |
| 14 Pennsylvania..... | 17,551 | 43,738 | 249.2 | 26,187 | 6,309 | 90 | 1,987 | 6,310 | 8,297 | 47.2 | 35,441 | 201.9 |
| 15 Iowa..... | 5,185 | 12,276 | 236.8 | 7,091 | 8,842 | 14 | 600 | 2,267 | 2,867 | 55.2 | 9,409 | 181.4 |
| 16 California..... | 11,192 | 22,930 | 204.9 | 11,738 | 8,702 | 12 | 1,303 | 1,079 | 2,382 | 21.2 | 20,548 | 183.5 |
| 17 Arizona..... | 877 | 1,762 | 200.9 | 885 | 250 | 4 | 62 | 216 | 278 | 31.6 | 1,484 | 169.2 |
| 18 Nevada..... | 352 | 596 | 169.3 | 244 | 103 | 0 | 22 | 226 | 248 | 70.4 | 348 | 98.8 |
| 19 Virginia..... | 8,695 | 13,343 | 153.5 | 4,648 | 4,738 | 68 | 864 | 1,987 | 2,851 | 32.7 | 10,492 | 120.6 |
| 20 Michigan..... | 16,442 | 24,995 | 152.0 | 8,553 | 7,765 | 38 | 1,627 | 6,315 | 7,942 | 48.3 | 17,053 | 103.7 |
| 21 Maryland..... | 7,586 | 8,412 | 110.9 | 826 | 2,339 | 22 | 774 | 1,308 | 2,082 | 27.4 | 6,330 | 83.4 |
| 22 Missouri..... | 23,100 | 25,038 | 108.4 | 1,938 | 37,839 | 61 | 2,449 | 8,436 | 10,885 | 47.1 | 14,153 | 61.2 |
| 23 Texas..... | 30,105 | 32,480 | 107.9 | 2,375 | 27,906 | 42 | 3,556 | 4,916 | 8,472 | 28.1 | 24,208 | 80.4 |
| 24 Illinois..... | 34,451 | 35,900 | 104.2 | 1,449 | 23,689 | 42 | 2,985 | 4,971 | 7,956 | 23.0 | 27,944 | 81.1 |
| 25 Delaware..... | 1,432 | 1,487 | 103.8 | 55 | 315 | 7 | 146 | 363 | 509 | 35.5 | 978 | 68.2 |
| 26 Massachusetts..... | 0 | 14,452 | 0 | 14,452 | 25 | 0 | 0 | 109 | 109 | 0 | 15,343 | 0 |
| 27 Connecticut..... | 0 | 6,075 | 0 | 6,075 | 10 | 0 | 0 | 100 | 100 | 0 | 5,975 | 0 |
| 28 Rhode Island..... | 0 | 2,501 | 0 | 2,501 | 0 | 0 | 0 | 81 | 81 | 0 | 2,420 | 0 |
| 29 New Hampshire..... | 0 | 1,796 | 0 | 1,796 | 124 | 0 | 0 | 44 | 44 | 0 | 1,752 | 0 |
| 30 District of Columbia..... | 0 | 1,974 | 0 | 1,974 | 99 | 1 | 0 | 0 | 0 | 0 | 1,974 | 0 |
| 31 Mississippi..... | 0 | 8,694 | 0 | 8,694 | 0 | 0 | 0 | 97 | 97 | 0 | 8,597 | 0 |
| 32 Louisiana..... | 0 | 8,605 | 0 | 8,605 | 0 | 0 | 0 | 53 | 53 | 0 | 8,552 | 0 |
| 33 Florida..... | 0 | 6,073 | 0 | 6,073 | 0 | 0 | 0 | 23 | 23 | 0 | 6,050 | 0 |
| TOTAL DEFICIT STATES..... | 183,648 | 445,605 | 242.6 | 261,957 | 213,608 | 608 | 19,724 | 48,774 | 68,498 | 37.3 | 378,327 | 206.0 |
| 1 Ohio..... | 41,936 | 39,372 | 93.9 | (a) 2,564 | 16,122 | 80 | 3,951 | 11,323 | 15,274 | 36.4 | 24,098 | 57.4 |
| 2 Colorado..... | 8,712 | 8,147 | 93.8 | (a) 565 | 4,823 | 21 | 1,809 | 2,465 | 4,274 | 49.0 | 3,873 | 44.4 |
| 3 Minnesota..... | 17,871 | 16,629 | 93.1 | (a) 1,242 | 62,217 | 51 | 2,827 | 4,101 | 6,928 | 38.7 | 9,701 | 54.2 |
| 4 Wyoming..... | 2,127 | 1,918 | 90.2 | (a) 209 | 418 | 4 | 335 | 736 | 1,071 | 50.3 | 847 | 39.8 |
| 5 Utah..... | 4,556 | 3,845 | 84.4 | (a) 711 | 5,240 | 21 | 384 | 1,595 | 1,979 | 43.4 | 1,866 | 40.9 |
| 6 Indiana..... | 30,820 | 21,830 | 70.8 | (a) 8,990 | 12,646 | 51 | 3,023 | 6,370 | 9,493 | 30.8 | 12,337 | 40.0 |
| 7 New Mexico..... | 3,025 | 2,143 | 70.8 | (a) 882 | 278 | 2 | 280 | 299 | 579 | 19.1 | 1,564 | 51.7 |
| 8 South Dakota..... | 20,113 | 11,326 | 56.3 | (a) 8,787 | 719 | 6 | 4,598 | 4,085 | 8,683 | 43.1 | 2,643 | 13.1 |
| 9 Oklahoma..... | 44,868 | 21,782 | 48.5 | (a) 23,086 | 18,744 | 30 | 4,088 | 7,673 | 11,761 | 26.2 | 10,021 | 22.3 |
| 10 Oregon..... | 16,689 | 7,924 | 47.5 | (a) 8,765 | 12,847 | 19 | 1,763 | 2,621 | 4,384 | 26.2 | 3,540 | 21.2 |
| 11 Nebraska..... | 34,065 | 14,165 | 41.6 | (a) 19,900 | 12,899 | 39 | 3,893 | 5,146 | 9,039 | 26.5 | 5,126 | 15.0 |
| 12 Idaho..... | 20,771 | 8,505 | 40.9 | (a) 12,266 | 2,243 | 17 | 1,631 | 5,113 | 6,744 | 32.4 | 1,761 | 8.4 |
| 13 North Dakota..... | 59,675 | 21,665 | 36.3 | (a) 38,010 | 4,951 | 12 | 13,374 | 5,636 | 19,010 | 31.8 | 2,655 | 4.4 |
| 14 Washington..... | 42,083 | 13,105 | 31.1 | (a) 28,978 | 19,607 | 23 | 3,169 | 4,218 | 7,387 | 17.5 | 5,718 | 13.5 |
| 15 Kansas..... | 117,474 | 34,667 | 29.5 | (a) 82,807 | 55,422 | 80 | 13,323 | 14,375 | 27,698 | 23.5 | 6,969 | 5.9 |
| 16 Montana..... | 32,170 | 9,372 | 29.1 | (a) 22,798 | 6,442 | 17 | 4,335 | 3,063 | 7,598 | 23.0 | 1,974 | 6.1 |
| TOTALS SURPLUS STATES..... | 496,955 | 236,395 | 47.5 | (a) 260,560 | 245,618 | 473 | 62,783 | 78,919 | 141,702 | 28.5 | 94,693 | 19.0 |
| TOTALS U.S.A..... | 680,603 | 682,000 | 100.2 | 1,397 | 459,226 | 1,081 | 82,448 | 127,693 | 210,141 | 30.8 | 473,020 | 69.5 |

TABLE III - WHEAT

Supply and Distribution in Continental United States:
Crop Years 1933 to 1940 inclusive, showing cumulative
Consumption and Exports; New crop; Deficit; Supply
and Net Reserves, including Imports.

ANALYSIS

- 1—This Table presents the combined totals of supply and distribution of wheat for the crop year, beginning July 1, 1933 and ending June 30, 1941.
- 2—11.6 per cent of wheat produced was used for seed for new crop.
- 3—13.3 per cent of wheat produced was fed on the farms of growers. 24.9 per cent of production does not leave the farm.
- 4—69.8 per cent of wheat produced was used for commercial foods and feeds. All domestic disappearance 94.7 per cent of production.
- 5—6.3 per cent of wheat production was exported and shipped.
- 6—Therefore 101.0 per cent of our wheat production was consumed, exported and shipped.
- 7—This proves that at the end of the 8th crop year we are in a deficit position from new crop production by 56,400,000 bushels.
- 8—Column 9 shows the cumulative deficit of production thru the years July 1, 1933 to June 30, 1941.
- 9—Taking into account all known sources of wheat supply, carry-over, production and imports of wheat - feed wheat and flour, during the first seven of the eight years, our net reserve was less than the 377,900,000 bushel carry-over at the beginning of the period, July 1, 1933.
- 10—It has taken eight years of production and imports to replace our reserve carry-over of 377,900,000 bushel which we had on July 1, 1933 and "up" it by 33,200,000 bushels.

NOTE.

The increase in production of wheat from the 1900-'4 period to 1935-'39 period is 16.6% while the increase in population for the same period is 62.9%. On the basis of an average per capita consumption rate of food of 3.7 bushels it requires 208,100,000 bushels more wheat to feed our nation in 1940 than it required in 1900.

TABLE III—WHEAT: Supply and Distribution in Continental United States; Crop Years, 1933 to 1940 inclusive, showing Cumulative Consumption and Exports; New Crop; Deficit; Supply and Net Reserves, including Imports.

| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) |
|-------------------------------|----------------|----------------------------|----------------------------|-----------------------|-------------------------------|-------------|------------------------------------|---------------------|----------------------------------|-----------------------------|---|------------------------------------|-------------------------------------|
| Crop Year beginning July 1 | Seed, New Crop | Feed (on Farms of Growers) | Foods and Commercial Feeds | Exports and Shipments | Total Consumption and Exports | New Crop | Cumulative Consumption and Exports | Cumulative New Crop | Cumulative Deficit of Production | Imports Milling, Feed-Wheat | Cumulative Supply Production Imports & Carry-Over | Cumulative Consumption and Exports | Cumulative net Reserve, All Sources |
| | Million Bu. | Million Bu. | Million Bu. | Million Bu. | Million Bu. | Million Bu. | Million Bu. | Million Bu. | Million Bu. | Thousand Bu. | Million Bu. | Million Bu. | Million Bu. |
| 1933 | 77.8 | 72.9 | 476.9 | 28.3 | 655.2 | 551.6 | 655.2 | 551.6 | - 103.6 | 153.0 | (14) 929.7 | 655.2 | 274.5 |
| 1934 | 82.5 | 83.7 | 489.1 | 13.3 | 668.6 | 526.3 | 1,323.8 | 1,077.9 | - 245.9 | 15,569.00 | 1,471.6 | 1,323.8 | 147.8 |
| 1935 | 87.5 | 83.1 | 488.6 | 7.1 | 666.3 | 626.3 | 1,990.1 | 1,704.2 | - 285.9 | 34,617.0 | 2,132.5 | 1,990.1 | 142.4 |
| 1936 | 96.5 | 88.2 | 503.2 | 12.2 | 700.1 | 626.7 | 2,690.2 | 2,330.9 | - 359.3 | 34,455.0 | 2,793.7 | 2,690.2 | 103.5 |
| 1937 | 94.1 | 112.8 | 495.8 | 103.3 | 806.0 | 876.6 | 3,496.2 | 3,206.5 | - 289.7 | 634.0 | 3,669.9 | 3,496.2 | 173.7 |
| 1938 | 75.8 | 125.5 | 498.8 | 109.5 | 809.6 | 931.7 | 4,305.8 | 4,138.2 | - 167.6 | 271.0 | 4,601.9 | 4,305.8 | 296.1 |
| 1939 | 72.8 | 91.4 | 537.3 | 48.3 | 749.8 | 751.4 | 5,056.6 | 4,889.6 | - 167.0 | (15) 263.0 | 5,353.6 | 5,055.6 | 298.0 |
| 1940 | 74.7 | 100.4 | 494.7 | 37.2 | 707.0 | 816.6 | 5,762.6 | 5,706.2 | - 56.4 | 3,523.0 | 6,173.7 | 5,762.6 | 411.1 |
| TOTALS (as of June 30th 1941) | 661.7 | 757.3 | 3,984.4 | 359.2 | 5,762.6 | 5,706.2 | 5,762.6 | 5,706.2 | - 56.4 | 89,485.0 | 6,173.7 | 5,762.6 | 411.1 |

References: (1) Seed for New Crop—The Wheat Situation, No. WS-58, issued August 1941, P.2.

(2) Fed on farms of wheat growers—The Wheat Situation (SUPRA).

(3) Foods and Commercial feeds—The Wheat Situation (SUPRA).

(4) Exports include only flour made of domestic wheat and wheat. Imports for milling in bond excluded. The Wheat Situation (SUPRA).

(5) Total of columns 1-2-3-4.

(6) New crop—The Wheat Situation (SUPRA).

(7) Cumulative total domestic disappearance and exports 8 years.

(8) Cumulative total new crop—8 years, excluding carry-over as of July 1, 1933.

(9) Cumulative excess of domestic disappearance and exports over domestic production—excluding carry-over July 1, 1933.

(10) Imports, also "full duty" (42c) and 10 and 5 per cent ad valorem duty.—The Wheat Situation (SUPRA).

(11) Cumulative total new crop including carry-over of 377.9 million bushels as of July 1, 1933, plus imports (See Column 10).

(12) Cumulative total domestic disappearance and export.

(13) Cumulative supply of wheat including carry-over of 377.9 million bushels on July 1, 1933.

(14) Carry-over of 377.9 million bushels added to new crop of 1933.

(15) Effective Jan. 1, 1939, new trade agreement with Canada reduced ad valorem duty on "feed wheat" from 10% to 5%—The Wheat Situation p.23, (SUPRA).

Compiled by: EDWARD E. KENNEDY,
Kankakee, Illinois

pp. 9, 12, 13, 15,
10 + 14 = 1 + 2

SUPREME COURT OF THE UNITED STATES.

No. 59.—OCTOBER TERM, 1942.

Claude R. Wickard, Secretary of Agriculture of the United States, et al.,
Appellants,

vs.

Roscoe C. Filburn.

On Appeal from the District Court of the United States for the Southern District of Ohio.

[November 9, 1942]

Mr. Justice JACKSON delivered the opinion of the Court.

The appellee filed his complaint against the Secretary of Agriculture of the United States, three members of the County Agricultural Conservation Committee for Montgomery County, Ohio, and a member of the State Agricultural Conservation Committee for Ohio. He sought to enjoin enforcement against himself of the marketing penalty imposed by the amendment of May 26, 1941,¹ to the Agricultural Adjustment Act of 1938,² upon that part of his 1941 wheat crop which was available for marketing in excess of the marketing quota established for his farm. He also sought a declaratory judgment that the wheat marketing quota provisions of the Act as amended and applicable to him were unconstitutional because not sustainable under the Commerce Clause or consistent with the Due Process Clause of the Fifth Amendment.

The Secretary moved to dismiss the action against him for improper venue but later waived his objection and filed an answer. The other appellants moved to dismiss on the ground that they had no power or authority to enforce the wheat marketing quota provisions of the Act, and after their motion was denied they answered ~~it~~, reserving exceptions to the ruling on their motion to dismiss.³ The case was submitted for decision on the pleadings and upon a stipulation of facts.

The appellee for many years past has owned and operated a small farm in Montgomery County, Ohio, maintaining a herd of

¹ 55 Stat. 203, 7 U. S. C. (Supp. No. I) § 1340.

² 52 Stat. 31, as amended, 7 U. S. C. § 1281 *et seq.*

³ Because of the conclusion reached as to the merits we need not consider the question whether these appellants would be proper parties if our decision were otherwise.

dairy cattle, selling milk, raising poultry, and selling poultry and eggs. It has been his practice to raise a small acreage of winter wheat, sown in the Fall and harvested in the following July; to sell a portion of the crop; to feed part to poultry and livestock on the farm, some of which is sold; to use some in making flour for home consumption; and to keep the rest for the following seeding. The intended disposition of the crop here involved has not been expressly stated.

In July of 1940, pursuant to the Agricultural Adjustment Act of 1938, as then amended, there was established for the appellee's 1941 crop a wheat acreage allotment of 11.1 acres and a normal yield of 20.1 bushels of wheat an acre. He was given notice of such allotment in July of 1940 before the Fall planting of his 1941 crop of wheat, and again in July of 1941, before it was harvested. He sowed, however, 23 acres, and harvested from his 11.9 acres of excess acreage 239 bushels, which under the terms of the Act as amended on May 26, 1941, constituted farm marketing excess, subject to a penalty of 49 cents a bushel, or \$117.11 in all. The appellee has not paid the penalty and he has not postponed or avoided it by storing the excess under regulations of the Secretary of Agriculture, or by delivering it up to the Secretary. The Committee, therefore, refused him a marketing card, which was, under the terms of Regulations promulgated by the Secretary, necessary to protect a buyer from liability to the penalty and upon its protecting lien.⁴

The general scheme of the Agricultural Adjustment Act of 1938 as related to wheat is to control the volume moving in interstate and foreign commerce in order to avoid surpluses and shortages and the consequent abnormally low or high wheat prices and obstructions to commerce.⁵ Within prescribed limits and by prescribed standards the Secretary of Agriculture is directed to ascertain and proclaim each year a national acreage allotment for the next crop of wheat, which is then apportioned to the states and their counties, and is eventually broken up into allotments for individual farms.⁶ Loans and payments to wheat farmers are authorized in stated circumstances.⁷

⁴ Wheat—507, §§ 728.240, 728.248, 6 Federal Register 2695, 2699-2701.

⁵ § 331, 7 U. S. C. § 1331.

⁶ § 335, 7 U. S. C. § 1335.

⁷ §§ 302(b)(h), 303, 7 U. S. C. §§ 1302(b)(h), 1303; § 10 of the amendment of May 26, 1941, 7 U. S. C. (Supp. I) §§ 1340(10).

The Act provides further that whenever it appears that the total supply of wheat as of the beginning of any marketing year, beginning July 1, will exceed a normal year's domestic consumption and export by more than 35 per cent, the Secretary shall so proclaim not later than May 15 prior to the beginning of such marketing year; and that during the marketing year a compulsory national marketing quota shall be in effect with respect to the marketing of wheat.⁶ Between the issuance of the proclamation and June 10, the Secretary must, however, conduct a referendum of farmers who will be subject to the quota to determine whether they favor or oppose it; and if more than one-third of the farmers voting in the referendum do oppose, the Secretary must prior to the effective date of the quota by proclamation suspend its operation.⁹

On May 19, 1941 the Secretary of Agriculture made a radio address to the wheat farmers of the United States in which he advocated approval of the quotas and called attention to the pendency of the amendment of May 26, 1941, which had at the time been sent by Congress to the White House, and pointed out its provision for an increase in the loans on wheat to 85 per cent of parity. He made no mention of the fact that it also increased the penalty from 15 cents a bushel to one-half of the parity loan rate of about 98 cents, but stated that "Because of the uncertain world situation, we deliberately planted several million extra acres of wheat. . . . Farmers should not be penalized because they have provided insurance against shortages of food."

Pursuant to the Act, the referendum of wheat growers was held on May 31, 1941. According to the required published statement of the Secretary of Agriculture, 81 per cent of those voting favored the marketing quota, with 19 per cent opposed.

The court below held, with one judge dissenting, that the speech of the Secretary invalidated the referendum; and that the amendment of May 26, 1941, "in so far as it increased the penalty for the farm marketing excess over the fifteen cents per bushel prevailing at the time of planting and subjected the entire crop to a lien for the payment thereof," should not be applied to the appellee because as so applied it was retroactive and in violation of the Fifth Amendment; and, alternatively, because the equities of the case so required.

⁶ § 335(a), 7 U. S. C. § 1335(a).

⁹ § 336, 7 U. S. C. § 1336.

43 F. Supp. 1017. Its judgment permanently enjoined appellants from collecting a marketing penalty of more than 15 cents a bushel on the farm marketing excess of appellee's 1941 wheat crop, from subjecting appellee's entire 1941 crop to a lien for the payment of the penalty, and from collecting a 15-cent penalty except in accordance with the provisions of § 339 of the Act as that section stood prior to the amendment of May 26, 1941.¹⁰ The Secretary and his co-defendants have appealed.¹¹

I.

The holding of the court below that the Secretary's speech invalidated the referendum is manifest error. Read as a whole and in the context of world events that constituted his principal theme, the penalties of which he spoke were more likely those in the form of ruinously low prices resulting from the excess supply rather than the penalties prescribed in the Act. But under any interpretation the speech cannot be given the effect of invalidating the referendum. There is no evidence that any voter put upon the Secretary's words the interpretation that impressed the court below or was in any way misled. There is no showing that the speech influenced the outcome of the referendum. The record in fact does not show that any, and does not suggest a basis for even a guess as to how many, of the voting farmers dropped work to listen to "Wheat Farmers and the Battle for Democracy" at 11:30 in the morning of May 19th, which was a busy hour in one of the busiest of seasons. If this discourse intended reference to this legislation at all, it was of course a public Act, whose terms were readily available, and the speech did not purport to be an exposition of its provisions.

To hold that a speech by a Cabinet officer, which failed to meet judicial ideals of clarity, precision, and exhaustiveness, may defeat a policy embodied in an Act of Congress, would invest communication between administrators and the people with perils heretofore unsuspected. Moreover, we should have to conclude that such an officer is able to do by accident what he has no power to do by design. Appellee's complaint, in so far as it is based on

¹⁰ 7 U. S. C. § 1339. This imposed a penalty of 15¢ per bushel upon wheat marketed in excess of the farm marketing quota while such quota was in effect. See also, amendments of July 26, 1939, 53 Stat. 1126, 7 U. S. C. § 1335(e), and of July 2, 1940, 54 Stat. 727, 7 U. S. C. § 1301(b)(6)(A), (B).

¹¹ 50 Stat. 752-753, § 3, 28 U. S. C. § 380a.

this speech, is frivolous, and the injunction, in so far as it rests on this ground, is unwarranted. *United States v. Rock Royal Co-operative*, 307 U. S. 533.

II.

It is urged that under the Commerce Clause of the Constitution, Article I, § 8, clause 3, Congress does not possess the power it has in this instance sought to exercise. The question would merit little consideration since our decision in *United States v. Darby*, 312 U. S. 100,¹² sustaining the federal power to regulate production of goods for commerce except for the fact that this Act extends federal regulation to production not intended in any part for commerce but wholly for consumption on the farm. The Act includes a definition of "market" and its derivatives so that as related to wheat in addition to its conventional meaning it also means to dispose of "by feeding (in any form) to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, or to be so disposed of."¹³ Hence, marketing quotas not only embrace all that may be sold without penalty but also what may be consumed on the premises. Wheat produced on excess acreage is designated as "available for marketing" as so defined and the penalty is imposed thereon.¹⁴ Penalties do not depend upon whether any part of the wheat either within or without the quota is sold or intended to be sold. The sum of this is that the Federal Government fixes a quota including all that the farmer may harvest for sale or for his own farm needs, and declares that wheat produced on excess acreage may neither be disposed of nor used except upon payment of the penalty or except it is stored as required by the Act or delivered to the Secretary of Agriculture.

Appellee says that this is a regulation of production and consumption of wheat. Such activities are, he urges, beyond the reach of Congressional power under the Commerce Clause, since they are local in character, and their effects upon interstate commerce are at most "indirect." In answer the Government argues that the

¹² See also, *Gray v. Powell*, 314 U. S. 402; *Wrightwood Dairy Co. v. United States*, 315 U. S. 110; *Cloverleaf Co. v. Patterson*, 315 U. S. 148; *Kirschbaum v. Walling*, 316 U. S. 517; *Overnight Transportation Co. v. Missel*, 316 U. S. 572.

¹³ 54 Stat. 727, 7 U. S. C. § 1301(b) (6) (A), (B).

¹⁴ §§ 1, 2, of the amendment of May 26, 1941; Wheat—507, § 728.251, 6 Federal Register 2695, 2701.

statute regulates neither production nor consumption, but only marketing; and, in the alternative, that if the Act does go beyond the regulation of marketing it is sustainable as a "necessary and proper"¹⁵ implementation of the power of Congress over interstate commerce.

The Government's concern lest the Act be held to be a regulation of production or consumption rather than of marketing is attributable to a few dicta and decisions of this Court which might be understood to lay it down that activities such as "production," "manufacturing," and "mining" are strictly "local" and, except in special circumstances which are not present here, cannot be regulated under the commerce power because their effects upon interstate commerce are, as matter of law, only "indirect."¹⁶ Even today, when this power has been held to have great latitude, there is no decision of this Court that such activities may be regulated where no part of the product is intended for interstate commerce or intermingled with the subjects thereof. We believe that a review of the course of decision under the Commerce Clause will make plain, however, that questions of the power of Congress are not to be decided by reference to any formula which would give controlling force to nomenclature such as "production" and "indirect" and foreclose consideration of the actual effects of the activity in question upon interstate commerce.

At the beginning Chief Justice Marshall described the federal commerce power with a breadth never yet exceeded. *Gibbons v. Ogden*, 9 Wheat. 1, 194-195. He made emphatic the embracing and penetrating nature of this power by warning that effective restraints on its exercise must proceed from political rather than from judicial processes. *Id.* at 197.

For nearly a century, however, decisions of this Court under the Commerce Clause dealt rarely with questions of what Con-

¹⁵ Constitution, Article I, § 8, cl. 18.

¹⁶ After discussing and affirming the cases stating that such activities were "local," and could be regulated under the Commerce Clause only if by virtue of special circumstances their effects upon interstate commerce were "direct," the opinion of the Court in *Carter v. Carter Coal Co.*, 298 U. S. 238, 308, stated that: "The distinction between a direct and an indirect effect turns, not upon the magnitude of either the cause or the effect, but entirely upon the manner in which the effect has been brought about. . . . the matter of degree has no bearing upon the question here, since that question is not—What is the extent of the local activity or condition, or the extent of the effect produced upon interstate commerce? but—What is the relation between the activity or condition and the effect?" See also, cases cited *infra*, notes 17 and 21.

gress might do in the exercise of its granted power under the Clause and almost entirely with the permissibility of state activity which it was claimed discriminated against or burdened interstate commerce. During this period there was perhaps little occasion for the affirmative exercise of the commerce power, and the influence of the Clause on American life and law was a negative one, resulting almost wholly from its operation as a restraint upon the powers of the states. In discussion and decision the point of reference instead of being what was "necessary and proper" to the exercise by Congress of its granted power, was often some concept of sovereignty thought to be implicit in the status of statehood. Certain activities such as "production," "manufacturing," and "mining" were occasionally said to be within the province of state governments and beyond the power of Congress under the Commerce Clause.¹⁷

It was not until 1887 with the enactment of the Interstate Commerce Act¹⁸ that the interstate commerce power began to exert positive influence in American law and life. This first important federal resort to the commerce power was followed in 1890 by the Sherman Anti-Trust Act¹⁹ and, thereafter, mainly after 1903, by many others. These statutes ushered in new phases of adjudication, which required the Court to approach the interpretation of the Commerce Clause in the light of an actual exercise by Congress of its power thereunder.

When it first dealt with this new legislation, the Court adhered to its earlier pronouncements, and allowed but little scope to the power of Congress. *United States v. Knight*, 156 U. S. 1.²⁰ These earlier pronouncements also played an important part in several of the five cases in which this Court later held that Acts of Congress under the Commerce Clause were in excess of its power.²¹

¹⁷ *Veazie v. Moor*, 14 How. 568, 573-574; *Kidd v. Pearson*, 128 U. S. 1, 20-22.

¹⁸ 24 Stat. 379, 49 U. S. C. § 1, et seq.

¹⁹ 26 Stat. 209, 15 U. S. C. § 1, et seq.

²⁰ See also, *Hopkins v. United States*, 171 U. S. 578; *Anderson v. United States*, 171 U. S. 604.

²¹ *Employers Liability Cases*, 207 U. S. 463; *Hammer v. Dagenhart*, 247 U. S. 251; *Railroad Retirement Board v. Alton R. Co.*, 295 U. S. 330; *Schechter Corp. v. United States*, 295 U. S. 495; *Carter v. Carter Coal Co.*, 298 U. S. 238; cf. *United States v. Dewitt*, 9 Wall. 41; *Trade Mark Cases*, 100 U. S. 82; *Hill v. Wallace*, 259 U. S. 44; *Heisler v. Thomas Colliery Co.*, 260 U. S. 245, 259-260; *Oliver Iron Co. v. Lord*, 262 U. S. 172, 178-179; *Utah Power & Light Co. v. Pfost*, 286 U. S. 165.

Even while important opinions in this line of restrictive authority were being written, however, other cases called forth broader interpretations of the Commerce Clause destined to supersede the earlier ones, and to bring about a return to the principles first enunciated by Chief Justice Marshall in *Gibbons v. Ogden*, *supra*.

Not long after the decision of *United States v. Knight*, *supra*, Mr. Justice Holmes, in sustaining the exercise of national power over intrastate activity, stated for the Court that "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business." *Swift & Co. v. United States*, 196 U. S. 375, 398. It was soon demonstrated that the effects of many kinds of intrastate activity upon interstate commerce were such as to make them a proper subject of federal regulation.²² In some cases sustaining the exercise of federal power over intrastate matters the term "direct" was used for the purpose of stating, rather than of reaching, a result;²³ in others it was treated as synonymous with "substantial" or "material,"²⁴ and in others it was not used at all.²⁵ Of late its use has been abandoned in cases dealing with questions of federal power under the Commerce Clause.

In the *Shreveport Rate Cases*, 234 U. S. 342, the Court held that railroad rates of an admittedly intrastate character and fixed by authority of the state might, nevertheless, be revised by the Federal Government because of the economic effects which they had

²² *Northern Securities Co. v. United States*, 193 U. S. 197; *Swift & Co. v. United States*, *supra*; *Loewe v. Lawlor*, 208 U. S. 274; *B. & O. R. Co. v. Interstate Commerce Commission*, 221 U. S. 612; *Southern Ry. Co. v. United States*, 222 U. S. 20; *Second Employers' Liability Cases*, 223 U. S. 1; *United States v. Patten*, 226 U. S. 525.

²³ *United Leather Workers v. Herkert Co.*, 265 U. S. 457, 471; cf. *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 511; *Di Santo v. Pennsylvania*, 273 U. S. 34, 44 (dissent); *Northern Securities Co. v. United States*, 193 U. S. 197, 395; *Standard Oil Co. v. United States*, 221 U. S. 1, 66-69.

²⁴ In *Santa Cruz Co. v. Labor Board*, 303 U. S. 453, 466-467, Chief Justice Hughes said: "'direct' has been contrasted with 'indirect,' and what is 'remote' or 'distant' with what is 'close and substantial'. Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as 'interstate commerce,' 'due process,' 'equal protection.'"

²⁵ *B. & O. R. Co. v. Interstate Commerce Commission*, 221 U. S. 612; *Second Employers' Liability Cases*, 223 U. S. 1; *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S. 194.

upon interstate commerce. The opinion of Mr. Justice Hughes found federal intervention constitutionally authorized because of "matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of ~~the~~ conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance." *Id.* at 351.

The Court's recognition of the relevance of the economic effects in the application of the Commerce Clause exemplified by this statement has made the mechanical application of legal formulas no longer feasible. Once an economic measure of the reach of the power granted to Congress in the Commerce Clause is accepted, questions of federal power cannot be decided simply by finding the activity in question to be "production" nor can consideration of its economic effects be foreclosed by calling them "indirect." The present Chief Justice has said in summary of the present state of the law: "The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of power over it, as to make regulation of them appropriate means to the ascertainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce, . . . The power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. . . . It follows that no form of state activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress. Hence the reach of that power extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power." *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 119.

Whether the subject of the regulation in question was "production," "consumption," or "marketing" is, therefore, not material for purposes of deciding the question of federal power before us. That an activity is of local character may help in a doubtful case to determine whether Congress intended to reach it.²⁶ The same consideration might help in determining whether in the absence of Congressional action it would be permissible for the

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²⁶ Cf. *Federal Trade Commission v. Bunte Bros.*, 312 U. S. 349.

state to exert its power on the subject matter, even though in so doing it to some degree affected interstate commerce. But even if appellant's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce and this irrespective of whether such effect is what might at some earlier time have been defined as "direct" or "indirect."

The parties have stipulated a summary of the economics of the wheat industry. Commerce among the states in wheat is large and important. Although wheat is raised in every state but one, production in most states is not equal to consumption. Sixteen states on average have had a surplus of wheat above their own requirements for feed, seed, and food. Thirty-two states and the District of Columbia, where production has been below consumption, have looked to these surplus-producing states for their supply as well as for wheat for export and carryover.

The wheat industry has been a problem industry for some years. Largely as a result of increased foreign production and import restrictions, annual exports of wheat and flour from the United States during the ten-year period ending in 1940 averaged less than 10 per cent of total production, while during the 1920's they averaged more than 25 per cent. The decline in the export trade has left a large surplus in production which in connection with an abnormally large supply of wheat and other grains in recent years caused congestion in a number of markets; tied up railroad cars; and caused elevators in some instances to turn away grains, and railroads to institute embargoes to prevent further congestion.

Many countries, both importing and exporting, have sought to modify the impact of the world market conditions on their own economy. Importing countries have taken measures to stimulate production and self-sufficiency. The four large exporting countries of Argentina, Australia, Canada, and the United States have all undertaken various programs for the relief of growers. Such measures have been designed in part at least to protect the domestic price received by producers. Such plans have generally evolved towards control by the central government.²⁷

²⁷ It is interesting to note that all of these have federated systems of government, not of course without important differences. In all of them wheat regulation is by the national government. In Argentina wheat may be purchased only from the national Grain Board. A condition of sale to the Board, which buys at pegged prices, is the producer's agreement to become subject

In the absence of regulation the price of wheat in the United States would be much affected by world conditions. During 1941 producers who cooperated with the Agricultural Adjustment program received an average price on the farm of about \$1.16 a bushel as compared with the world market price of 40 cents a bushel.

Differences in farming conditions, however, make these benefits mean different things to different wheat growers. There are several large areas of specialization in wheat, and the concentration on this crop reaches 27 percent of the crop land, and the average harvest runs as high as 155 acres. Except for some use of wheat as stock feed and for seed, the practice is to sell the crop for cash. Wheat from such areas constitutes the bulk of the interstate commerce therein.

On the other hand, in some New England states less than one percent of the crop land is devoted to wheat, and the average harvest is less than five acres per farm. In 1940 the average percentage of the total wheat production that was sold in each state as measured by value ranged from 29 per cent thereof in Wisconsin to 90 per cent in Washington. Except in regions of large-scale production, wheat is usually grown in rotation with other crops; for a nurse crop for grass seeding; and as a cover crop to prevent soil erosion and leaching. Some is sold, some kept for seed, and a percentage of the total production much larger than in areas of specialization is consumed on the farm and grown for such purpose. Such farmers, while growing some wheat, may even find the balance of their interest on the consumer's side.

The effect of consumption of home-grown wheat on interstate commerce is due to the fact that it constitutes the most variable factor in the disappearance of the wheat crop. Consumption on

to restrictions on planting. See Nolan, *Argentine Grain Price Guaranty, Foreign Agriculture* (Office of Foreign Agricultural Relations, Department of Agriculture) May, 1942, pp. 185, 202. The Australian system of regulation includes the licensing of growers, who may not sow more than the amount licensed, and who may be compelled to cut part of their crops for hay if a heavy crop is in prospect. See Wright, *Australian Wheat Stabilization, Foreign Agriculture* (Office of Foreign Agricultural Relations, Department of Agriculture) September, 1942, pp. 329, 336. The Canadian Wheat Board has wide control over the marketing of wheat by the individual producer. 4 Geo. VI, c. 25, § 5. Canadian wheat has also been the subject of numerous Orders in Council. E. g., 6 Proclamations and Orders in Council (1942) 183, which gives the Wheat Board full control of sale, delivery, milling and disposition by any person or individual. See, also, *Wheat Acreage Reduction Act, 1942*, 6 Geo. VI, c. 10.

the farm where grown appears to vary in an amount greater than 20 per cent of average production. The total amount of wheat consumed as food varies but relatively little, and use as seed is relatively constant.

The maintenance by government regulation of a price for wheat undoubtedly can be accomplished as effectively by sustaining or increasing the demand as by limiting the supply. The effect of the statute before us is to restrict the amount which may be produced for market and the extent as well to which one may forestall resort to the market by producing to meet his own needs. That appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial. *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 606 *et seq.*; *United States v. Darby*, *supra*, at 123.

It is well established by decisions of this Court that the power to regulate commerce includes the power to regulate the prices at which commodities in that commerce are dealt in and practices affecting such prices.²⁸ One of the primary purposes of the Act in question was to increase the market price of wheat and to that end to limit the volume thereof that could affect the market. It can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions. This may arise because being in marketable condition such ~~home-grown~~ wheat overhangs the market and if induced by rising prices tends to flow into the market and check price increases. But if we assume that it is never marketed, it supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. Home-grown wheat in this sense competes with wheat in commerce. The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon. This record leaves us in

²⁸ *Swift & Co. v. United States*, 196 U. S. 375; *Stafford v. Wallace*, 258 U. S. 495; *Chicago Board of Trade v. Olsen*, 262 U. S. 1; *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295; *United States v. Trenton Pottery Co.*, 273 U. S. 392; *Tagg Bros. & Moorhead v. United States*, 280 U. S. 420; *Standard Oil Co. of Indiana v. United States*, 283 U. S. 163; *Currin v. Wallace*, 306 U. S. 1; *Mulford v. Smith*, 307 U. S. 38; *United States v. Rock Royal Co-operative*, *supra*; *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150; *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381; *United States v. Darby*, *supra*; *United States v. Wrightwood Dairy Co.*, *supra*; *Federal Power Commission v. Pipeline Co.*, 315 U. S. 575.

no doubt that Congress may properly have considered that wheat consumed on the farm where grown if wholly outside the scheme of regulation would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices.

It is said, however, that this Act, forcing some farmers into the market to buy what they could provide for themselves, is an unfair promotion of the markets and prices of specializing wheat growers. It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others. The conflicts of economic interest between the regulated and those who advantage by it are wisely left under our system to resolution by the Congress under its more flexible and responsible legislative process.²⁹ Such conflicts rarely lend themselves to judicial determination. And with the wisdom, workability, or fairness, of the plan of regulation we have nothing to do.

III.

The statute is also challenged as a deprivation of property without due process of law contrary to the Fifth Amendment, both because of its regulatory effect on the appellee and because of its alleged retroactive effect. The court below sustained the plea on the ground of forbidden retroactivity "or in the alternative that the equities of the case as shown by the record favor the plaintiff." 43 F. Supp. 1017, 1019. ~~The validity of an Act of Congress is not to be refused application by the courts as arbitrary and capricious and forbidden by the Due Process Clause merely because it is deemed in a particular case to work an inequitable result.~~ p
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Appellee's claim that the Act works a deprivation of due process even apart from its allegedly retroactive effect is not persuasive. Control of total supply, upon which the whole statutory plan is based, depends upon control of individual supply. Appellee's claim is not that his quota represented less than a fair share of the national quota, but that the Fifth Amendment requires that he be free from penalty for planting wheat and disposing of his crop as he sees fit.

²⁹ Cf. *M'Culloch v. Maryland*, 4 Wheat. 316, 413-415, 435-436; *Gibbons v. Ogden*, *supra* at 197; *Stafford v. Wallace*, 258 U. S. 495, 521; *Chicago Board of Trade v. Olsen*, 262 U. S. 1, 37; *Helvering v. Gerhardt*, 304 U. S. 405, 412.

We do not agree. In its effort to control total supply, the Government gave the farmer a choice which was, of course, designed to encourage cooperation and discourage non-cooperation. The farmer who planted within his allotment was in effect guaranteed a minimum return much above what his wheat would have brought if sold on a world market basis. Exemption from the applicability of quotas was made in favor of small producers.³⁰ The farmer who produced in excess of his quota might escape penalty by delivering his wheat to the Secretary or by storing it with the privilege of sale without penalty in a later year to fill out his quota, or irrespective of quotas if they are no longer in effect, and he could obtain a loan of 60 per cent of the rate for cooperators, or about 59 cents a bushel, on so much of his wheat as would be subject to penalty if marketed.³¹ Finally, he might make other disposition of his wheat, subject to the penalty. It is agreed that as the result of the wheat programs he is able to market his wheat at a price "far above any world price based on the natural reaction of supply and demand." We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellant's burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes.

The amendment of May 26, 1941 is said to be invalidly retroactive in two respects: first, in that it increased the penalty from 15 cents to 49 cents a bushel; secondly, in that by the new definition of "farm marketing excess" it subjected to the penalty wheat which had theretofore been subject to no penalty at all, i. e., wheat not "marketed" as defined in the Act.

It is not to be denied that between seed time and harvest important changes were made in the Act which affected the desirability and advantage of planting the excess acreage. The law as it stood when the appellee planted his crop made the quota for his farm the normal or the actual production of the acreage allotment, whichever was greater, plus any carry-over wheat that he could have marketed without penalty in the preceding marketing

³⁰ § 7 of the amendment of May 26, 1941 provided that a farm marketing quota should not be applicable to any farm on which the acreage planted to wheat is not in excess of fifteen acres. When the appellee planted his wheat the quota was inapplicable to any farm on which the normal production of the acreage planted to wheat was less than 200 bushels. § 335(d) of the Agricultural Adjustment Act of 1938, as amended by 54 Stat. 232.

³¹ §§ 6, 10(c) of the amendment of May 26, 1941.

year.³² The Act also provided that the farmer who, while quotas were in effect, marketed wheat in excess of the quota for the farm on which it was produced should be subject to a penalty of 15 cents a bushel on the excess so marketed.³³ Marketing of wheat was defined as including disposition "by feeding (in any form) to poultry or livestock which, or the products of which, are sold, bartered, or exchanged, . . ."³⁴ The amendment of May 26, 1941, made before the appellee had harvested the growing crop, changed the quota and penalty provisions. The quota for each farm became the actual production of acreage planted to wheat less the normal or the actual production, whichever was smaller; of any excess acreage.³⁵ Wheat in excess of this quota, known as the "farm-marketing excess" and declared by the amendment to be "regarded as available for marketing" was subjected to a penalty fixed at 50 per cent of the basic loan rate for cooperators,³⁶ or 49 cents, instead of the penalty of 15 cents which obtained at the time of planting. At the same time there was authorized an increase in the amount of the loan which might be made to non-cooperators such as the appellee upon wheat which "would be subject to penalty if marketed" from about 34 cents per bushel to about 59 cents.³⁷ The entire crop was subjected by the amendment to a lien for the payment of the penalty.

The penalty provided by the amendment can be postponed or avoided only by storing the farm marketing excess according to regulations promulgated by the Secretary or by delivering it to him without compensation; and the penalty is incurred and becomes due on threshing.³⁸ Thus the penalty was contingent upon

³² § 335(c), as amended July 26, 1939, 53 Stat. 1126, 7 U. S. C. § 1335(c).

³³ § 339, 7 U. S. C. § 1339.

³⁴ § 301(b)(6)(A), (B), as amended July 2, 1940, 54 Stat. 727, 7 U. S. C. § 1301(b)(6)(A), (B).

³⁵ By an amendment of December 26, 1941, 55 Stat. 872, effective as of May 26, 1941, it was provided that the farm marketing excess should not be larger than the amount by which the actual production exceeds the normal production of the farm wheat-acreage allotment, if the producer establishes such actual production to the satisfaction of the Secretary, provision being made for adjustment of the penalty in the event of a downward adjustment in the amount of the farm marketing excess.

³⁶ § 3, of the amendment of May 26, 1941.

³⁷ § 302(b) had provided for a loan to non-cooperators of 60% of the basic loan rate for cooperators, which in 1940 was 64¢. See United States Department of Agriculture Press Release, May 20, 1940. The same percentage was employed in § 10(c) of the amendment of May 26, 1941, and the increase in the amount of the loan is the result of an increase in the basic loan rate effected by § 10(a) of the amendment.

³⁸ Wheat—507, § 728.251(b), 6 Federal Register 2695, 2701.

an act which appellee committed not before but after the enactment of the statute, and had he chosen to cut his excess and cure it or feed it as hay, or to reap and feed it with the head and straw together, no penalty would have been demanded. Such manner of consumption is not uncommon. Only when he threshed and thereby made it a part of the bulk of wheat overhanging the market did he become subject to penalty. He has made no effort to show that the value of his excess wheat consumed without threshing was less than it would have been had it been threshed while subject to the statutory provisions in force at the time of planting. Concurrently with the increase in the amount of the penalty Congress authorized a substantial increase in the amount of the loan which might be made to cooperators upon stored farm marketing excess wheat. That appellee is the worse off for the aggregate of this legislation does not appear; it only appears that if he could get all that the Government gives and do nothing that the Government asks, he would be better off than this law allows. To deny him this is not to deny him due process of law. *Cf. Mulford v. Smith*, 307 U. S. 38.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

